Public Utilities FORTNIGHTLY

January 23, 1930

PUBLIC UTILITIES REPORTS, INC.
WASHINGTON, D. C.

"Impossible to get a better Diesel engine lubricant than TEXACO URSA OIL"

This is the opinion of a mid-west engineer operating a 40 h.p. Fairbanks-Morse 2-cycle Diesel. This is a small installation but the experience is typical.

The engine is four years old. For two years and a half several different oils were used. Then Texaco Ursa Oil was tried.

Before that time carbon had been removed every three weeks, and about every three months the piston pulled to release stuck rings and clean carbon.

Since Texaco Ursa Oil was used it has not been necessary to remove carbon, the piston has not been pulled and the rings have never stuck. The engine for the first time is operating at full capacity and occasionally with overload.

It's an example of the fine results of effective lubrication. Texaco Ursa Oil is a superior Diesel lubricant. Clean, full-bodied Texaco Ursa Oil has exceptional power to seal compression and remarkable freedom from all the carbon-forming impurities that are such a prevalent source of trouble.

Try Texaco Ursa Oil in your own plant. Confirm for yourself the opinions of other engineers throughout the country. Texaco Ursa Oil is preferred in many of the largest Diesel power plants. Ask a nearby Texaco Lubrication Engineer to work with you—or write The Texas Company. No obligation.

TEXACO LUBRICANTS

THE TEXAS COMPANY
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THERE IS A TEXACO LUBRICANT FOR EVERY PURPOSE

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Public Utilities Fortnightly

VOLUME V — *January 23, 1930* — NUMBER 2

PUBLIC UTILITIES REPORTS, INC., PUBLISHERS

PUBLIC UTILITIES FORTNIGHTLY a magazine dealing with the problems of utility regulation and allied topics, including the official decisions of the State Commissions and courts; endorsed by the National Association of the Utility Industry and by the National Association of Railroad and Utilities Commissioners, and supported in part by those conducting public utility service, manufacturers, bankers, accountants and other users of the publication. Published every other Thursday; 75 cents a copy; $15.00 a year; with bound volumes and Annual Digest, $32.50 a year. Editorial and advertising office, Munsey Building, Washington, D. C., circulation office, Duffy-Powers Building, Rochester, N. Y. Entered as second-class matter April 29, 1915, at the Post Office at Rochester, N. Y., under the Act of March 3, 1879.

Typical installations of Union Metal Fluted Steel Poles

POLES— STRAIGHT STRONG and STURDY

TYPICAL of this modern age is the Union Metal Fluted Steel Pole. Designed with the City Beautiful ideal in mind, it is gracefully tapered and fluted in the manner of architectural columns. Here is no ordinary pole, no public eyesore. Straight, strong and sturdy, Union Metal Poles stand in even rows along the curb-line, monuments to the foresight of progressive utility operators.

Because they are fabricated from heavy steel, they are strong enough to withstand heavy side strains. And because of their strength—and appearance—one set of poles may be used to support lighting units, trolley span wires, traffic signals, and distribution and transmission lines. The result is true economy for the users of the poles and a decided improvement in street appearance.

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Offices in All Principal Cities

UNION METAL
DISTRIBUTION AND TRANSMISSION POLES

Pages with the Editors

THE index for Volume IV of PUBLIC UTILITIES FORTNIGHTLY (which includes the thirteen numbers from July 11 to December 26, 1929, inclusive), is still in course of preparation; as soon is it is completed it will be issued free of charge to all subscribers.

* *

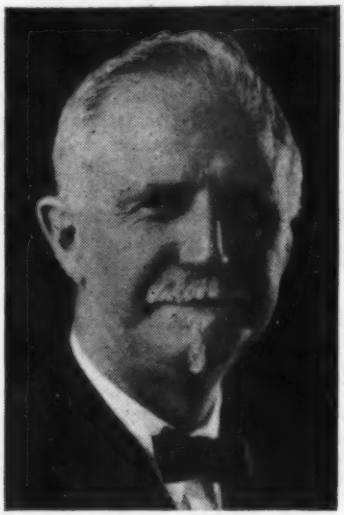
IN order to make this forthcoming index of the greatest possible practical value for reference purposes, the editors have prepared it as a "subject index." It will be issued as a 16-page supplement to this magazine—probably with the February 6th number.

* *

"WHETHER justified or not, an adverse public sentiment has been aroused against holding companies, which is exerting an unfavorable influence against the private operation of public utilities under state regulation, and the trend is toward Federal control."

* *

IN the above challenging sentence—quoted *verbatim* from the leading article in the coming February 6th issue of this magazine—does J. F. SHAUGHNESSY, Chairman of the Public Service Commission of Nevada take the bull by the horns and plunge boldly into the subject of one of the most pressing problems that confronts the Commissions today—the regulation of holding companies.



Purdy

ROGER W. BABSON

How important this subject is, and what it means not only to the State Commissions but to the entire present system of regulation, may be adduced from CHAIRMAN SHAUNESSY'S observation that "there is apprehention, not without reason, that the present system of regulation will break down entirely" unless the relations between the State Commissions and the Interstate Commerce Commission are established on a more practical working basis than they at present enjoy.

* *

CHAIRMAN SHAUGHNESSY'S constructive criticisms point the way to a solution of these timely problems; they are of direct interest both to the regulatory bodies as well as to the holding companies—and to those public utility companies that play such an important part in the economic and political drama that is unfolding before us.

* *

AMONG the other features of the forthcoming number of PUBLIC UTILITIES FORTNIGHTLY—the February 6 issue—will be a comprehensive and scholarly discussion of "Some of the Unsolved Problems of Regulating Interconnecting Companies"—a subject not unrelated to CHAIRMAN SHAUGHNESSY'S article—by GERALD M. FRANCIS, Professor of Economics at Rockford College, Illinois; also the second of the series of articles on the public relations of utility companies, contributed by IVY L. LEE, who is generally regarded as the foremost "counsel in public relations" in the world.

* *

"EVERY man has a right to utter what he thinks is truth," stated the famous DR. SAMUEL JOHNSON, "and every other man has a right to knock him down for it."

* *

JUST what constitutes the "truth" is not always so easy to determine—a statement which in itself constitutes a truth as the editors see it.

* *

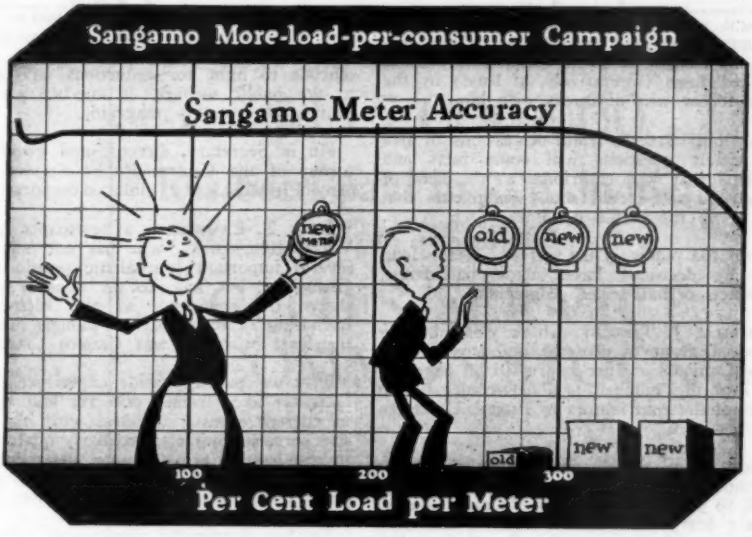
WITHIN the field of regulation, where so many economic, legal, financial and political elements enter into consideration, the task of ascertaining the truth sometimes becomes an involved process.

* *

WHEN honest men contribute facts and opinions toward the solution of a problem—even though their opinions are subconsciously colored by their personal interests and are

(Continued on page VIII)

Replacing 20,000,000 Meters



Vigorous campaigning for more load per consumer, which means more load per meter, introduces requirements that cannot be met by old meters.

In the old meters overload capacity and registration accuracy under widely varying load and temperature, especially at low power-factors, are so much inferior to the meter of today that their replacement should be the first step in any serious load-building program.

The Sangamo Type HC Meter is designed for the consumer load-building program. It has a straight line accuracy from the lightest up to 300 per cent load and is temperature compensated from 20 to 120 deg. F. at all power-factors.

Supplement 67 tells all about the HC Meter. Sent on request.

All modern American meters are far superior in their performance on overload and varying temperature to the best made five years ago. This high degree of perfection in manufacture is due largely to the full cooperation between the American meter manufacturers and the two great national meter committees.

SANGAMO

ELECTRIC COMPANY . . . . SPRINGFIELD, ILLINOIS 86-8331-9

discounted accordingly—the problem is in the process of being solved.

* *

PUBLIC UTILITIES FORTNIGHTLY will shortly announce an important series of articles, contributed by nationally-prominent leaders of public opinion, who differ frankly on highly controversial topics so far as the regulation of public utilities are concerned.

* *

EACH contributor to this important symposium will express the truth as he sees it—and each will take his chance of being knocked down (figuratively, at least) by the other fellow who disagrees with him.

* *

BUT out of these frank discussions of live and timely questions will come facts and opinions that will contribute to the sum of knowledge and mould sound judgments that will serve the public good.

* *

AND the public is not served, in the long run, by decisions based upon half-truths, near-facts or half-baked judgments.

* *

THOMAS J. TINGLEY, whose views on the proposed grant of Federal authority to the State Commissions are expressed on pages 73 to 77 of this number, is a new-comer to the ranks of the contributors to PUBLIC UTILITIES FORTNIGHTLY.

* *

BUT he is well-known among the State Commissioners, as he served from April 16, 1926, to July 1, 1929, as the People's Counsel on the Maryland Public Service Commission—filling with distinction, during that period, a unique office.

* *

MR. TINGLEY was born October 13, 1894, at Bath, N. Y., attended the public schools of Baltimore and the Baltimore City College, graduated from Johns Hopkins University in 1916 with Phi Beta Kappa honors, and the Columbia University Law School in 1919.

* *

HE was admitted to the New York bar in 1921, and has been practicing his profession in Baltimore since 1920.

* *

MR. TINGLEY views the proposal to cloak our State Commissioners with Federal power as an official with practical experience in regulatory problems.

* *

ROGER W. BABSON (whose pertinent observations on what the power of public opinion is destined to mean to the electric light and power utilities are expressed in the leading article of this number) is too well known as a statistician and economist to need any introduction to our readers.

* *

NOT only has MR. BABSON appeared frequently in the pages of PUBLIC UTILITIES FORTNIGHTLY (his short but forceful article on customer-ownership was quoted in the daily press throughout the country a few months ago) but he has just completed a series of articles that will point out the increasing importance of the public relations of the three most important groups of utilities: the electric utilities, the gas utilities and the street railway utilities.

* *

THE article on pages 67 to 72 of this number is the first of this series.

* *

W. M. MCFARLAND, who makes some pointed observations about tax assessments and criticizes the failure of some utility officials to fight for reductions as contrary to the public welfare, is another previous-contributor to this magazine.

* *

HE is Secretary, director and general attorney of the Central Public Service Company of Indiana, and its affiliated corporations.

* *

JOHN T. LAMBERT is a newspaper man of Washington, D. C., who has not only filled several important journalistic positions with distinction, but has, to an unusual degree, shared the confidence of and enjoyed the friendship of many of our famous men—not the least of whom was CALVIN COOLIDGE.

* *

THE exceptionally wide experience of MR. LAMBERT as a trained observer and analyzer of current events, combined with his extensive personal contacts, peculiarly qualifies him to comment informally upon the significance of news items that are of concern to the utility companies and to the regulatory bodies.

* *

IN his fortnightly department "As Seen from the Side-lines" (turn to page 97 of this number which you are holding in your hands) MR. LAMBERT will give his readers the "low down" on current trends in the field of regulation, and present his own personal interpretation of the actions of those famous straws which are reputed to "show which way the wind is blowing."

* *

THE regulation of taxicabs by Public Service Commissions is an innovation in most parts of the country, although operators over regular routes have been regulated for several years. The Connecticut Commission, acting under a new law passed last year, has outlined its policies in this field. (See page 113.)

* *

THE merchandising question has arisen in a case before the Wisconsin Commission. (See page 119.) There a reported profit from this activity was excluded from the utility revenues, under a statute requiring separate accounts for merchandising profits and losses.

* *

WHAT rights and privileges pass to the purchaser of utility property, is one of the questions recently decided by the California Commission. (See page 157.)

—THE EDITORS.

JANUARY

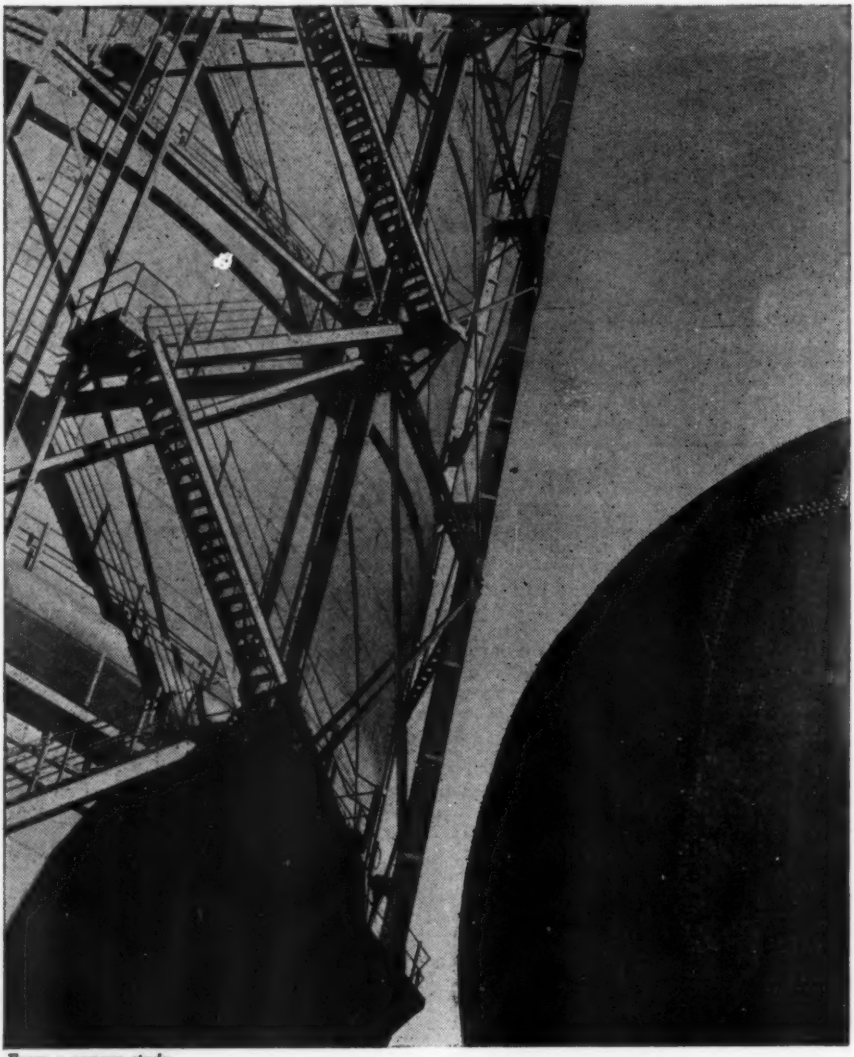
Reminders of Coming Events — **ALMANACK** — *Notable Events and Anniversaries*

23	T*h*	The first use of radio communication for saving human life at sea was made by the steamship *Republic*, off the Nantucket Lightship, 1909.
24	F	The discovery of gold in California started the immigration to the west and paved the way for the railroad development that followed, 1848.
25	S*a*	The transcontinental telephone line, connecting New York city and San Francisco, was officially opened to the public, 1915.
26	S	FRANK PARMELEE, at the age of twelve, left his home in Genesee County, N. Y., for Chicago, where he later established the coach company that still bears his name, 1828.
27	M	The first patents were issued to THOMAS ALVA EDISON for his inventions of the incandescent light, on which the world's lighting systems are now based, 1880.
28	T*u*	FREDERICK ALBERT WINSOR organized the first gas company in England and the first public street lighting took place in Pall Mall, London, 1807.
29	W	Natural gas was used for lighting purposes in the U. S. at Fredonia, N. Y., 1826, but it was not until 1872 that it was piped for commercial use at Titusville, Pa.
30	T*h*	*The Smithsonian Institution has computed that 3,000,000,000 hard-working slaves would be required to duplicate the power now being used in the United States alone.*
31	F	The first "sky diver" was officially christened and placed in service for passenger travel by airplane between Cleveland, Chicago, and Twin Cities, 1929.

FEBRUARY

1	S*a*	New U. S. postal rates went into effect; letters traveling up to 40 miles cost 12 cents; to 90 miles, 15 cents; to 150 miles, 18½ cents; over 500 miles, 37½ cents; 1814.
2	S	Telephone communication was opened between Brussels and Paris by means of the micro-telephone instrument invented by DR. CORNELIUS HERZ, 1885. ¶*Candelmas Day.*
3	M	New York harbor was so tightly frozen that the Cunard steamship *Britannia* had to be brought into port through a canal 10 miles long chopped in the ice, 1844.
4	T*u*	The Panama Construction Co. was incorporated at Albany, N. Y., for the purpose of building the canal, 1907. The Interstate Commerce Commission was established, 1887.
5	W	Steel cars for all transit lines in Greater New York were provided for in the bill proposed by SENATOR BERNARD DOWLING and ASSEMBLYMAN DICKSTEIN at Albany, 1919.

"Where there is no vision, the people perish."
—PROVERBS, XXIX, 18.



From a camera study by Anton Bruehl

Engines of Industry

The Gas Tank

In no country on the globe have the great mechanisms created by the business world assumed such gigantic proportions or become such commanding features in the national scene as in the United States. Here is a striking study of some modern public utility structures that are symbols of American power and progress.

Public Utilities
FORTNIGHTLY

VOL. V; NO. 2 JANUARY 23, 1930

The Rising Tide of Public Opinion

WHAT IT MEANS TO THE ELECTRICAL UTILITIES

A few years ago a public relation policy was regarded as a "benevolent caprice." Today the attitude of the ratepayer is a power to be reckoned with, inasmuch as it not only touches the finances of the public utility but directly affects legislation. The fate of the utilities is passing largely into the hands of the voters.

BY ROGER W. BABSON

THE other morning I was reading the prospectus of a corporation offering a new stock issue. My attention was struck by one paragraph in that part of the prospectus which described the history and business of the corporation in question. It reads as follows:

> "The success of the company is attributed in a large measure . . . to the unusual service which it gives its customers. The company's system of training its employees, which today number 400, is unique, and is responsible largely for the goodwill which has been built up."

Here was a statement tossed into the midst of financial statistics which had more significance to me than anything else in that prospectus. It was evidence not only that wide-awake, forward-looking corporations today consider employee goodwill and public relationships as among their most valuable assets, but also that prospective investors look for just this sort of information concerning a company before they put their money into it.

I CAN remember the time not so many years ago when public relations constituted a vague and nebu-

lous subject with which the average corporation—even the public utilities—did not concern themselves. Here and there the president of some company would build up a progressive and well-organized public relationship policy, but it would be more or less considered an act of benevolent caprice.

It was generally considered a sufficient rendering of the account of a public utility's stewardship to the public if it furnished reasonable service. Least of all was this something to be called to the attention of the public and prospective stockholders, as was done in the prospectus to which I have referred at the beginning of this article.

Today, however, we are in a new era in regard to the relationship between the public utilities and the consuming public. We realize now that goodwill between the public and the company is not simply a pleasant though quite minor factor. We realize to the contrary that no public utility can long prosper unless it has the warm friendship of the public which it serves and the confidence of the individual customers who spend their money for gas or electric or railroad expenses every day of their lives.

ONE of the outstanding features in the amazing growth of the power and light industry has been its everlasting willingness to keep abreast of the rapidly changing developments in the science of electricity. We are inclined to point to the reduction in the cost of electricity as the primary evidence of the development of the power and light industry. However important this is, we should not lose sight of the fact that price is of secondary importance in power and light as compared with service.

The first requirement of electric service today is, of course, that it be abundant, reliable, and constant. The flexibility of electricity is one of the main reasons why its use has advanced so tremendously during the past two decades. As a result of this advance, our entire American standard of living has been raised and the American people have come to be so dependent upon the use of electricity for light, heat, and power that its sudden withdrawal would actually create a tragic emergency in all our big cities.

The disaster and distress which would follow any sudden annihilation of electric power and light stagger the imagination. Under these circumstances, those who are directing this vital industry have a greater sense of public responsibility than any statesman could have in questions of political or economic significance. The fact is, I believe, that the safety of our country and its future development are in the hands of men such as are guiding the interests of our power and light companies far more than it is dependent upon our lawmakers and our public officials. We are living in an age of the dynamo.

IT was but a few years ago when the public was suspicious of power and light corporations as years before they were suspicious of the railroads. I do not mean to say, of course, that no criticism is ever justified. To the contrary, I believe that wherever a business is fraught with public interest, it should never be divorced from

The Value of Utility Stocks Will Depend More and More Upon the Voters

"ULTIMATELY the value of public utility stocks depends not upon gross income, but rather upon the rates that the public will allow to be charged.

"AT present there is no limit in sight to the output in kilowatt hours. Every present trend indicates that the demand for electric current and gas will continually increase. Given the same rates, this means that the net earnings of the companies would continue to increase likewise. Whether or not these net earnings will proportionately increase depends upon the attitude of the Public Service Commissions; the attitude of these Commissions depends, in turn, upon the attitude of the public; namely, the voters."

public regulation and from a continuous active interest on the part of the public in how that business is run.

It is entirely possible, therefore, that in particular cases, criticism against the operation of certain power and light corporations has been justified. But these incidents are not in any way indicative of the sense of trust which the great majority of those men in control of the power and light business have felt from the beginning. Furthermore, during the last decade there has steadily been built up a good will on the part of the public which is more accurately reflected in one specific way, although clearly indicated by many others.

This single proof of the public's confidence in our great power and light companies may be found by glancing at a list of the stockholders of any one of these companies. It is not generally realized that 12,000,000 people are today devoting their attention to the purchase of stocks of the corporations of America, compared with 2,000,000 in 1914. Of this number, a greater proportion have invested in the public utility industry during recent years than in any other single line of business.

FOR some years I have strongly recommended to my clients the issues of certain power and light companies, and when several of these corporations became component parts recently of a great and successful merger, my confidence in the power and light industry was not only justified but reflected in the favorable comments I have received from many clients. I refer here to the Niagara Hudson Corporation, which is today one of the great power and light units of the western hemisphere. This public confidence has, however, not been created over night. It has been built up through years of insistent and in-

telligently planned public relationships.

The realization that every user of light and power was a potential part owner in the business resulted some years ago in the establishment of a customer-ownership campaign which has had a tremendous influence in behalf of developing valuable goodwill and advancing the prospects of light and power. There are four advantages in customer ownership which appear to me to be paramount. They are as follows:

1. Public "partership" increases the goodwill of the company because of the large body of local investors whose friendly attitude and whose influence will extend throughout the community.

2. This policy of local financing encourages thrift among the mass of the people by pointing out the advantages of saving, and by offering to them a sound investment in an enterprise which they know about, operating under public regulation, and offering securities purchasable in small amounts.

3. This method of selling stock increases the efficiency and loyalty of employees because of the fact that they are thus induced to make themselves more familiar with the company's affairs and because they are usually given an opportunity to supplement their income by commissions on the sale of stock.

4. This method of financing serves as an effective argument against any move toward municipal ownership or hampering public interference, since in a very real sense local *popular* ownership is already secured.

WHEREVER you or I as average citizens come in personal contact with a power and light company, right there is where emphasis should be placed on seeing to it that the contact is satisfactorily and intelligently established. Realizing this, the management of a light and power company should, for example, see to it that in the selection of telephone operators the greatest possible care is taken in having the right type of person on that job. When I call up the X. Y. Electric Company to ask about an unexplained item on my bill, my request is first received by the telephone operator. Under the circumstances, this position requires special alertness, courtesy, and cheerfulness. Equally so is this important when my call finally reaches the proper department and I talk with the individual whose duty it is to handle my request or inquiry. Therefore, far more than in any other business should the white-collar workers in a public utility be unusually well trained in those qualifications of personality, courtesy, and cheerfulness, which are so important in formulating the opinion which the customer holds of the company that serves him.

ONE of the most important contacts which a power and light company has with its customers is through its meter readers. These men are in many cases actually the sole contact point between the customers and the company. It is even not unusual in these days to find on the route cards of meter readers of a progressive electric company reminders to inquire regarding some member of the customer's family who was ill

when the reader last called. Similarly, any reported service difficulties are noted on the cards.

A number of electric companies are trying with success a plan of dividing their territories into a suitable number of districts, each having a carefully selected representative responsible for all direct contact with the customers therein. This includes meter reading, collections, attention to service troubles, solicitation of new business, and other functions which tend to develop a friendly and even intimate relationship between customers and the company.

ONE reason why the public is increasingly friendly to the power and light companies is that in the case of gas or electricity the greater the output, the lower the cost is per unit. Hence, as the business of a company grows, the price of its products can be reduced, wages can be increased, and service can be improved without any decrease in net earnings. This is not so in the case of certain public utilities, such as railroads and telephone companies. More telephones tend to increase the rates. It is interesting to note that in the cost of living index prepared by the United States Department of Labor, the only item which shows a steady decrease since the index was first made in 1914 is electricity.

THE power and light industry offers an excellent opportunity for young men with energy and imagination. Many technical schools are now focusing upon this industry as an objective in turning out men trained for future executive positions in our growing public utility corporations. As a graduate myself of Massachusetts Institute of Technology, I am keenly aware of the value and necessity of such training. Nevertheless, a young man's education along these lines is not so essential in this kind of business as is the possession and development of a good disposition.

NO public utility company can afford to employ a man or woman who ever loses his or her temper or who is ever "sassy" or "fresh." All public utility employees must have calm, even dispositions. It is no business for red-headed people to enter!

Public utility companies, dependent as they are on the goodwill of the community they serve, are finding that this goodwill is developed or ruined by their employees. Hence, my advice, so far as personnel is concerned, is that a power and light company should employ only people who are kindly and tactful and never talk back, and who are anxious to help and serve customers at all hours of the day and night.

¶ *"No public utility company can afford to employ a man or woman who ever loses his or her temper or who is ever 'sassy' or 'fresh.' All public utility employees must have calm, even dispositions. It is no business for red-headed people to enter!"*

IN addition to and far outreaching in importance the reasons above given for better public relations, is a very fundamental reason; I refer to the fact that ultimately the value of public utility stocks depends not upon gross income, but rather upon the rates that the public will allow to be charged.

At present there is no limit in sight to the output in kilowatt hours. Every present trend indicates that the demand for electric current and gas will continually increase. Given the same rates, this means that the net earnings of the companies would continue to increase likewise. Whether or not these net earnings will proportionately increase depends upon the attitude of the Public Service Commissions. The attitude of these Commissions depends in turn upon the attitude of the public; namely, the voters. Hence, the importance of keeping the voters happy. This can be done, first, by good service, secondly, through extending customer ownership, and thirdly, by training all employees to be courteous under all conditions.

THE question is even more fundamental than I have thus far suggested. These Commissions, which determine rates, will not consider the capitalization of holding companies nor the price at which these holding company stocks are selling. Capitalization is not the important consideration. These Commissions will consider only three factors:

(1) The physical valuation of the operating companies.

(2) The rate of interest which the company is entitled to earn on this valuation, which will be some figure between 6 and 8 per cent.

(3) The quality of the management, which will determine the fee which the holding company will be allowed to charge.

The first of the above items will be a question of statistics; the second will depend partly upon statistics and partly upon the attitude of the public; the third feature may depend almost wholly on the attitude of the public. I can readily realize a condition of public resentment, wherein holding companies will be allowed to charge no fee whatsoever, although today the fee is a very important item.

I WANT to stress the fact that in the splendid future, which is before the power and light companies today, the keystone of their success lies in proper public relations.

The really big leaders in the utility business today are working toward this end. It was the late Judge Gary who said:

"The people have a right to know how the people's business is carried on, and the more they know about it, the better it will be."

This applies with particular force to public utilities, and I find that the power and light companies are among the leaders in being not willing but anxious to take the public into their confidence in every possible way.

IN the following issue of PUBLIC UTILITIES FORTNIGHTLY*—out February 6—*IVY LEE*, who is regarded by many as the most experienced of all the public utility experts in the country, will point out the increasingly important part that clearly-defined and continuously-maintained public relations activities must play in the development of the plans and policies of a public utility company.*

The Proposed Grant of Federal Power to the State Commissions

One of the possible solutions for solving the problem of regulating the rapidly expanding public utility operations that are extending over the borders of the states.

By THOMAS J. TINGLEY

FORMERLY PEOPLE'S COUNSEL, PUBLIC SERVICE COMMISSION OF MARYLAND

DURING the progress of the Revolutionary War, the sovereign American states were leagued together in a loose defensive union. The medium of inter-relation was the Continental Congress, as there were no Federal executive or judicial officers. This legislative body was, in fact, a gathering of ambassadors who represented sovereign political entities. Congress lacked imperative sanction to enforce obedience to its laws, either on the part of states or individuals. The only concession made by the states was the establishment of fairly continuous diplomatic intercourse, through the medium of this deliberative body, for the purpose of making possible uniform and somewhat concerted action.

With the advent of peace, the impulse toward union provided by the need for maintaining a uniform front against a common foe, vanished. There appeared in its stead a deluge of retaliatory laws on the part of the several states, discriminating against the commercial interests of their sister commonwealths.

The resulting situation was chaotic. The conduct of business between the states was well nigh impossible. There developed, too, among responsible men, a feeling of dissatisfaction with the loose and ineffectual manner in which the war had been waged, and a sense of the necessity of stronger military and naval power, if the states were to survive.

These factors, among others, resulted in the ratification of the Constitution of the United States in 1789.

BY this document, the states granted to a Federal Government, created thereby, control over military and naval matters, coinage, interstate commerce, patents, and copyright matters, and other subjects then deemed to require uniformity of treatment. All powers not enumerated as granted to the United States were declared to be reserved to the several sovereign grantors.

Almost immediately, there developed two schools of construction of this historic document.

One school entertained the belief

that, as the grant of powers to the Federal Government was one of enumeration, such powers should be strictly construed and held within narrow confines.

The other school held that only by broad construction of the powers granted could the central government grow strong enough to function properly in the performance of its domestic duties, and maintain its newly established position as a power.

Both schools of political interpretation have persisted, in at least some of their aspects, to the present day. Both have been represented ably in Congress, on the bench, in the White House, and on the battlefield. All the ranging phases of their significance have received careful treatment in tome and treatise. After all, however, it is not ordinarily to political or military history that we turn to note the trend of constitutional and governmental development. There is, at times, a superficial and apparent connection between such factors. Usually, however, the roots of change lie deep in the strata of social or economic causation.

THE prime function of politics is to adjust government to social and economic conditions. There is an inevitable lag between problem and solution, because of the clumsy and ineffectual character of our political mechanism, but, with the exception of suddenly discovered, widely advertised, and usually short-lived panaceas, public administration follows the trail blazed by business and social development.

In certain aspects of governmental growth, there is indisputably manifest a trend toward the assertion or reassertion of the right of the several states to determine for themselves all matters not incontestably granted to the Federal Government. This is particularly true with respect to such questions as prohibition enforcement, and the reaction to the recent proposal to increase the scope of Federal constitutional authority to empower the United States to regulate the employment of child labor. In the field of public utility control, however, there are factors at work which seemingly indicate a quite contrary trend. The resultant situation might seem to merit more detailed and lengthy treatment than can here be attempted.

As a matter of constitutional formulism, the regulation of utilities and business affected with a public interest, located wholly within the confines of a single state, should be left to the appropriate local tribunal. Those whose business is interstate in character, it would seem, should be subject only to Federal authority. But the Interstate Commerce Commission, while possessing a fairly wide grant of powers over many classes of utilities, has none at all as to others and has been restricted largely in its activities, by the limitations of appropriations and the more pressing confines of human capacity. It is at present occupied chiefly with the regulation of the railroads.

There have been many and important instances where action with respect to utilities whose activities crossed state boundary lines was imperative, and where the Interstate Commerce Commission was either

The Rapid Expansion of Utility Service Threatens to Outstrip Governmental Regulations

"MOST of the states originally empowered their Commissions to deal only with intrastate commerce. The trend now is to increase the grant of power, by legislative action, to include the field of authority reserved concurrently to the states, under decisions of the Supreme Court of the United States, until Congress has acted in the premises. . . . Interstate utility operation and the ramifications of modern holding company control necessitate co-operative regulatory action. Otherwise, industrial development will far outstrip governmental adjustment."

without statutory power to act, or was unable or unwilling to do so. Necessity is the mother of invention, even in the field of political development. The several states have had to devise means of meeting the problems presented.

THE situation first arose with respect to utilities that operated and had property located in more than one state.

Valuation and apportionment of property located without the state, and of that within the state, was necessary to determine the amount and value of that devoted to the service of the local public. Often this involved, of necessity, common investigations by the regulatory bodies of the two or more states involved, and the holding of joint hearings. For this to be done, legislation was necessary, in many cases.

Such legislation has been passed by a number of the states, and joint investigations and hearings and determinations have followed it.

Of course, even without affirmative legislative action, informal co-operation between State Commissions, in many cases, would not only be desirable, but necessary.

In one recent case, a natural gas company serving two states had all of its wells and most of its distributive system in one, but a very large part of its product was actually consumed in the other. It was clear that some allocation of investment would have to be made, unless the ratepayers of one state or the other were to be called upon to carry more than a fair share of the cost of supplying the service, and that a fair allocation would only be made by coincidence or community action. Members of the Commission of each state attended the hearings held by the other, and conferred with the other Commissioners, without express statutory authority, in the sole interest of meeting the situation presented. The result was the satisfactory solution of the problem involved.

In the course of its opinion, the

Maryland Public Service Commission, one of the two bodies, said (Md. P. S. C. Rep. Vol. 18, p. 85):

> "The property of the Cumberland & Allegheny Gas Company is located in both West Virginia and Maryland; and, in order to arrive at the fair value of that property, it has been necessary to determine the value of the entire property in both states, used and useful for Maryland consumers, and to allocate the value of the property devoted to the use of the consumers in each state. The Public Service Commission law of Maryland permits the valuation of property in other states, and such procedure has been followed in other jurisdictions.
>
> "This Commission realizes the necessity of close co-operation with the Commissions of adjoining states. In the present case, representatives of the Maryland Commission have attended the majority of the hearings in West Virginia and the Chairman of the West Virginia Commission has attended the greater part of the hearings held in Maryland. There has also been close co-operation between the engineering staffs of the two Commissions."

THIS phase of political development, and the community of effort involved, have not been confined to the states. In such matters of common import as the determination of the pre-license cost of water power projects involving the use of navigable streams and licensed by the United States under the Federal Water Power Act, it was felt by Congress to be highly desirable that there be concerted action on the part of the Federal Power Commission and the regulatory bodies of the states in which any project involved might be located. All are interested in this valuation problem,—the Federal Government because of the possibility of public purchase after the expiration of the license period, and the state bodies because of the problem of fixing fair and proper rates. This community of interest already has been recognized, and joint hearings and investigations have been held by the Federal Commission and the utility Boards of Maryland and Pennsylvania, in connection with the Conowingo development. This is an aspect of governmental community interest that would seem certain to grow greater with the passage of time and increased industrial development.

THERE is a final aspect of growth that is still more interesting. That is the possibility of the regulatory bodies of the several states acting as agencies of the Federal Government in helping the latter to perform its difficult duties, and at the same time making possible a degree of control of interstate commerce that would otherwise be impracticable.

Under the provisions of Bills H. R. 3822 and S. 1351, 71st Congress, First Session, introduced and strongly sponsored during the last session of Congress, members of Commissions of states desiring to do so would be empowered to act in a joint body as agencies of the Federal Government in the regulation of interstate motor bus operation, with a right of appeal on the part of the operator or other interested party to Federal authorities. Participation in such a plan would be difficult on the part of many states by reason of restrictive constitutional provisions.

Such concerted effort on the part of state and Federal agencies would

go far toward removing the zero zone that now exists between the two spheres of authority. It would render possible the effective regulation of the motor bus and other industries that are now beyond the pale of Federal supervision. It would greatly relieve a Federal agency already overburdened with work.

Most of the states originally empowered their Commissions to deal only with intrastate commerce. The trend now is to increase the grant of power, by legislative action, to include the field of authority reserved concurrently to the states, under decisions of the Supreme Court of the United States, until Congress has acted in the premises. This is also in the interest of extending the effectiveness of control, and eliminating zones of non-regulation.

DAILY there is greater indication of the necessity of community action among the states, and between the states and the United States. Daily there is greater indication of response to that requirement.

Interstate utility operation and the ramifications of modern holding company control necessitate co-operative regulatory action. Otherwise, industrial development will far outstrip governmental adjustment. If history is to repeat itself, political machinery will be changed to meet the economic need, and political boundaries will be changed to meet the economic need, and political boundaries will become of less and less significance in matters requiring governmental intervention.

A Unified Wire and Radio Communication System Is Necessary

(Observations of OWEN D. YOUNG *before the Senate Interstate Commerce Commission)*

"I TAKE it that the policy of the country is pretty well settled at present, and that the great preponderance of public opinion supports it, that we are not to put the government into any business, even a public service business, where such service can be rendered effectively and cheaply by private concerns under government regulation.

"Our present communications services are being rendered by private concerns, under government regulation to a greater or less degree. I take it there is no thought of turning them over to the government, certainly at this time.

"One who has had considerable experience with telephone systems all over the world, as I have, cannot fail to note the superiority of the telephone service in this country, administered by a private concern, over the telephone service in other countries which are government owned and operated. I, for one, do not believe the time has come to turn our communications services over to the government.

. . . . . .

"If you have any hesitation about unifying our external communications in the hands of a private company under government control, then I beg of you, in the national interest, to unify them under government ownership in order that America may not be left, in the external communication field, subject to the dictation and control of foreign companies or governments."

PUBLIC UTILITIES FORTNIGHTLY
MUNSEY BUILDING ✣ WASHINGTON, D. C.

January 23, 1930.

Subject: Independence of Commissions.

Dear Sir:

The reappointment of Joseph B. Eastman to the Interstate Commerce Commission should be gratifying to all persons interested in the maintenance of the independence of our regulatory Commissions.

It was Commissioner Eastman who, in the O'Fallon Case, maintained that the so-called Supreme Court doctrine that railroads are entitled to earn a return on the value of their property is unsound.

Commissioner Eastman, who comes from Massachusetts, has been looked upon in some quarters as a first-class radical and in others as the keeper of the faith. He has been a conspicuous member of the Commission. That he is honest and fearless everybody knows, who knows anything about the work of the Interstate Commerce Commission.

It would not have been well if predictions that he would fail of reappointment because regarded as radical had turned out to be well founded. As we understand it, Commissioner Eastman was endorsed by the Baltimore & Ohio Railroad and by other powerful corporations with whose views he was not in accord. That is flattering to Commissioner Eastman and it is also a credit to those who endorsed him, notwithstanding the fact that his opinions were unfavorable to their own.

Such has not always been the fate of men who have sat either on the Interstate Commerce Commission or on

State Commissions. Opposition has developed against them at times solely on the ground that their decisions were not what their opponents thought they ought to have been.

Such an attitude towards Commissioners would, of course, destroy their independence unless they were very strong men who preferred to be right rather than retain their positions on the Commission.

Do we not often hear of threats to abolish Commissions because their decisions do not happen to be popular with one group or another? Controversies of this kind sometimes get into politics. That is the last thing we should want to happen. Parties to controversies before Commissions are entitled to the independent judgment of the Commissioners on the merits without regard to the effect the decision may have on the individual fortunes of Commissioners.

If a Commissioner shows himself to be able, honest, independent, and fearless he is sufficiently qualified for reappointment if he wants it.

A packed Commission, either wholly conservative or wholly radical, would not be in the best interests of the country.

The reappointment of Commissioner Eastman is, therefore, based upon the right principle, that is to say independence of Commissions.

Very truly yours,

Henry C. Spurr

HCS:S

THE BURDEN ON THE UTILITY RATEPAYER OF

Improper Tax Assessments

A Plea for Parity

HAVE you ever wondered why it is that a utility claims one value for taxation purposes and another for rate-making purposes? In this article, Mr. McFarland explains the reasons; furthermore he gives much sound advice to utility executives in the matter of controlling their taxation assessments on utility properties.

BY W. M. McFARLAND

WE are still being troubled by the ancient regulatory bugaboo of whether or not there really exists one true value of utility property for rate-making purposes and an entirely different value for taxation purposes. Many times even the man who asserts this fact either has no reasons to advance in support of his statement, or has an unsatisfactory explanation of why such is actually the case or why such a condition is entirely fair.

Recently, in a southern state that has no Commission form of regulation, a municipality, itself in financial straits, after losing an expensive litigation to establish a lower valuation for rate-making purposes, attempted to retaliate by raising the valuation for taxation purposes and assessed the utility at the same figure as that allowed by the courts for rate purposes. This action apparently was not due entirely to a desire for revenge; it was probably due to the fact that the municipality was honestly unable to see any logic or justice in maintaining the two valuations.[1]

ONE State Tax Commission recently contended that an assessment which resulted in over $6 per meter per year tax on a utility was fair, solely because of the high value for the property which the company had on its books. The community was one where the former private owners of the utility had, with the consent of the Public Service Commission, tried various costly and unsuccessful experiments and had paid high for their financing. The consequent high book value being due to the stand of the State Tax Commission and also to the fact that the community was not growing and hence revenues were not increasing,

[1] It is interesting to note that the utility concerned was evidently no better informed than were the authorities, since their only defense was "that such action was not fair unless similar action was taken as to the other utilities." The result was several months of hard work on the part of the other utilities to establish the fallacy of such action.

resulted in a community rate schedule which is still a serious handicap to both the community and to the utility.

A proper tax assessment would go a long way to relieve this situation.

IN spite of the zeal which the ordinary operating property manager has for making the best possible showing in his reduction of all items that affect his net figures, his reaction to the suggestion that he is being excessively assessed for taxes and that a determined effort to rectify the situation should be made, generally meets with a negative response. He takes the position usually that

(a) His protest will seriously disturb his public relations;

(b) That it will impair his position so far as the propriety of his rate schedules is concerned;

(c) That, because of a statute that requires assessments to be at the full 100 per cent of the property's true cash value, and because his assessment is already below either his rate valuation or the price paid for the property, a protest would be hopeless;

(d) That recent expenditures on the plant would result in a raised assessment if the question were opened up with the taxation authorities.

There has even been recent Commission action which threatened an attempt to force the utilities to accept the same figure both for rate making and for taxation purposes, and at least one state legislature, at its last session, came near passing an act to bring about such a situation by statute.

All of these attitudes are traceable to lack of information and to the failure to see the simple justice, which is backed by ample court precedent, in keeping the two valuations separate and distinct.

ONE reason for the misunderstanding concerning these two valuations is that when taxation values are compared to rate values, the fact is generally overlooked that the rate value is not necessarily the present true value of the property in dollars and cents. The business of rendering public service is so charged with public interest, that it is necessary for it to be regulated in order that the interest of all parties affected by such service might be protected. It has been found that a utility can best serve public interest if it is allowed to function as a guarded monopoly. In return for submitting to regulation the utility must be given a fair profit on its property devoted to public use. All these factors must be considered in determining the valuation for rate-making purposes, and this generally results in a decided difference between actual taxable value and a fair value for rate-making purposes.

For example, let us suppose that a utility has a plant making artificial gas, after the discovery of nearby natural gas. Under the combined pressure of public demand and Commission encouragement, suppose it acquires this natural gas supply and distributes it to the public. This results in the artificial gas plant becoming merely a standby plant. When the company has made the expenditure required to change over to natural gas (which is done much oftener than is generally supposed) and its old plant has stood practically idle for

several years, the property incurs a great depreciation in its efficiency.

In a few years let us assume that the company is forced to go back to artificial gas because of the failure of the natural gas supply. The company must then recondition the old plant and again switch its services, all of which require large expenditures of money.

Probably no Commission would refuse to allow all these expenditures to go into the value for rate-making purposes, yet such expenditures have not added anything of consequence to the present cash value of the property. We can readily see that we have here a situation in which the valuation for rate-making purposes is one figure and the true valuation is another figure entirely. It is apparent that as the valuation for rate-making purposes is not the true valuation, it would be of no assistance whatsoever in arriving at a valuation for taxation purposes.

It has been recognized, in the development of precedent governing all utility operations, that valuations for one purpose will not apply to valuations for another purpose. Any valuation, for any purpose, of a utility is difficult to determine, not only because it must vary for each purpose but also because a utility property cannot be compared to similar ones in that community, since there are too few utility properties in each community for comparison.

Furthermore, the property does not change hands frequently enough to establish a market value for it. The uses which the utility puts to its various kinds of property are peculiar to itself and, therefore, have their effect upon the true value of the property. These facts were in the minds of the Federal Courts when they recently reviewed the decisions of the United States Supreme Court with respect to the taxable value of railroads and public service corporations. In Mobile & O. R. Co. *v.* Schnipper, 31 F. (2d) 587, decided March 21, 1929, at page 590, the Court said:

> "Concerning values and proper basis for taxation, the Supreme Court of the United States in Cleveland, C. C. & St. L. R. Co. v. Backus, 154 U. S. 439, 38 L. ed. 1041, 14 Sup. Ct. Rep. 1122, said:
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> " 'The rule of property taxation is that the value of the property is the basis of taxation. It does not mean a tax upon earnings which the property makes, nor for the privilege of using the property, but rests solely upon the value. *But the value of property results from the use to which it is put and varies with the profitableness of that use present and prospective,* actual and anticipated. *There is no pecuniary value outside of that which results from such use.* The amount and *profitable character* of such use *determines the value.*' "

In Chicago & N. W. R. Co. *v.* Eveland, 13 F. (2d) 442, in reviewing numerous decisions, the Court said:

> "In State *v.* Illinois C. R. Co. 27 Ill. 64–67 (79 Amer. Dec. 396), the supreme court of that state said:
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> " 'Where property has a known and determined value ascertained by commerce, in it, as in most kinds of personal property, or fixed by law, as money, there can be no difference of opinion. But there are many kinds of property as to which the assessor has no such satisfactory guide. Such is peculiarly the case with railroad property *and other similar property, constructed not only for the profit of owners but for the accommodation of the public,* under the sanction and by the exercise of the sovereign power of the state. In such cases, if the property is devoted to the use for which it was designed and is in a condi-

Where the Blame for the Utilities' Tax Burdens Lies:

"It is an undoubted fact that the average operating utility is bearing much more than its fair burden of taxation in the community which it is serving. This is, of course, due partially to the uniform tendency of the average assessor in bearing down more on a corporate entity which is supposed to be wealthy and which is probably owned by a large holding company. . . . However, the greater part of the blame should be placed upon the shoulders of the operators and managers themselves. Owing to their lack of information and their fear of consequences, they have let their assessments alone, with the natural result that these assessments have been constantly mounting."

tion to provide its maximum income, one very important element for ascertaining its present value is discovered, *and that is its net profits.* When property is thus improved it is manifest that it is more or less valuable, *as it yields a greater or less profit in its product and economical use.*'"

In Morgan's L. & T. R. & S. S. Co. v. Board of Reviewers, 41 La. Ann. 1156, 3 So. 507–511, the supreme court of Louisiana reversed the court below, because it was of the opinion that the district judge erred in fixing the valuation of the plaintiff's property on the basis of "the cost of construction, including labor and material, and giving no material weight or consideration to the evidence adduced in regard to the net revenues and earnings of the road."

This does not mean that the taxing authorities should, regardless of their statutes and state precedents, abandon from their consideration every factor except the profitableness of the investment. Original cost, depreciation, additions, present sale value, junk value, reproduction cost new, local conditions, seasonal demands, and many other items should very properly be considered, but the weight of these factors must be governed by some measure, and the only measure which takes into consideration all these points is the return which the property yields. As the other factors are necessarily and almost in each instance a guess, and as there is no method of determining which one of these guesses is the most correct, either before or after giving effect to the others, it is evident that the return allowed is not only the most important factor, but is the only factor which reflects the others.

An apt illustration of the weakness and injustice of any tax valuation that is based on reproduction cost of the property is a case in which, by virtue of some franchise requirement, a utility is forced into extraordinary or continual extensions into a territory that is not productive of revenue sufficient to pay a return on

several years, the property incurs a great depreciation in its efficiency.

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the cost of service. These extensions represent considerable additional investment, and it is usual for the taxing authorities to feel that they are being very generous if they do not add the total cost of them to the property's tax assessment; some operating managers feel that they have accomplished much if they avoid the addition of the total cost to the assessment. The fact is that the property not only has sustained no increase in value by this expenditure, but the value has actually been decreased, as the result is to decrease the net return which the property is able to earn; it would, therefore, be logical to say that there should be no additional assessment and further, that the utility is really entitled to have the assessment lowered.

A SIMILAR situation is where a utility which meets numerous expenditures that are really in the nature of replacements. These replacements merely take the place of some other equipment, and while they may be better and cost more and result in better service to the public, they do not increase the return; hence they should not increase the tax assessment. The effect of allowing such expenditures to increase the tax assessment is to penalize the utility for maintaining or improving the service to the public.

Based upon the foregoing principles, a proper valuation for taxation purposes may be established; however, this is usually far from being the proper or lawful assessment for that property.

Here again, the local taxing authorities and operating managers hold up statutes to sustain their position that a high assessment is not improper. They cite statutes to the effect that the assessment must be 100 per cent of the true value, and having arrived at a valuation, they contend that such valuation must be the tax assessment.

IT is well recognized, both in states that have such statutes and states without such "incumbrances," that the customary assessment is anywhere from 20 per cent to 80 per cent of the true value of the property. The utility is not only entitled, as a matter of fair play, to a parity with other taxpayers, but this parity is an enforceable right at law. The courts have said that the Federal Constitution requires that taxation shall be uniform and that no taxpayer can be assessed at a higher rate than that at which the body of taxpayers in that taxing district are being assessed.[2]

It would, therefore, appear that if the true valuation of a utility for taxation purposes has been arrived at as, say, $100,000 and if the prevailing rate of assessment is 40 per cent of the true value, then the proper and lawful assessment for the utility would be $40,000.

THE utility is supposed to get a fair return on its investment. As this is the basis of the regulation of

[2] Sioux City Bridge Co. *v.* Dakota County, 260 U. S. 441, held that the Federal constitutional provisions as to due process of law and equal protection, required that a statute calling for 100 per cent assessment of value, must yield to the superior requirement of uniformity and that no taxpayer can be assessed 100 per cent of the true cash value of his property if the other taxpayers are being assessed at a lower percentage. See also Sunday Lake Iron Co. *v.* Wakefield, 247 U. S. 350; Louisville & N. R. Co. *v.* Greene, 244 U. S. 522.

The Utility Is Legally Entitled to a Parity with Other Taxpayers

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utilities, such a return must be forthcoming if the community expects the Commission to require proper service of the utility. If the utility is penalized by excessive tax assessments, this money must, and does, come out of the rates charged and will be reflected in the rate schedule, with the result that users of that utility service bear an unfair portion of the burden of the expense of conducting the affairs of that community and paying for its public improvements. One of the best arguments of an operating manager is that his tax assessment is too high, and that a quick computation would show how easy it would be for him to work out a rate reduction if he were given a proper number of years with a truly fair tax assessment.

IT is an open secret that even in communities where the fairest of tax assessments are in effect, the local utilities furnish a very substantial part of the tax money actually collected by that community. As one of the largest contributors toward the support of public improvements and public welfare, and as one whose payments are always made, the public utility is certainly entitled to fair and just treatment in the matter of assessments of its properties.

It is an undoubted fact that the average operating utility is bearing much more than its fair burden of taxation in the community which it is serving. This is, of course, due partially to the uniform tendency of the average assessor in bearing down more on a corporate entity which is supposed to be wealthy and which is probably owned by a large holding company. The average individual property owner gets off with a considerably more satisfactory assessment. This excessive burden on the utility is also due, in some degree, to the failure of the taxing authorities to recognize the justice and legality of the considerations already mentioned. However, the greater part of the blame should be placed upon the shoulders of the operators and managers themselves. Owing to their lack of information and their fear of consequences, they have let their assessments alone, with the natural result that these assessments have been constantly mounting.

LIKE all other American institutions, taxing authorities will listen to reason. They will no more protect the utility's interest if the util-

ity fails to present its claims than a court will argue the case of a party to a litigation who fails to be represented at the trial. They will give justice only as and when they are convinced as to what constitutes justice.

In fairness to tax authorities, weight should be given to the position in which they find themselves after years of failure by the utility to object to its assessment. The majority of communities are not blessed with an excess of tax funds with which to meet the demands made upon them. These demands usually increase from year to year, and the tax authorities are constantly meeting with requests for more money wherever it can be raised. The authorities naturally feel that, where an assessment has not been objected to, it must be proper, and they rely to some extent on that source in fixing their levies and rates. With such a situation it is embarrassing and difficult, no matter how just the claim, for a utility to demand a large and proper decrease in view of the fact that they have submitted for years to improper increases.

IT is apparent that the utility manager not only owes a duty to the property owner to constantly watch and guard his tax assessment, but he also owes a duty to his community to keep that assessment constantly on a fair level; otherwise his demands for justice may later result in a serious financial handicap to the community and possibly postpone some badly needed public improvement.

If an unfair tax burden is being carried, the best and least hurtful time to remedy the situation for all parties concerned is the present; if the remedy is deferred, the affliction will only be greater but the operation more dangerous and more painful.

Believe It or Not

(By our own Ripley)

THERE are about 3,500 privately owned gas and electric plants in the United States, or an average of something over 73 per state.

* * *

THE office building of the Standard Oil Company, 120 Broadway, New York city, has 7,290 telephones, or more than in the whole of Greece.

* * *

TINTED ice cubes, in almost any color of the rainbow, are being used to cool drinks served in smart homes equipped with electric refrigerators.

* * *

NEW YORK state gas and electric utility companies are paying taxes amounting to $100,000 a day, or more than thirty-six million dollars yearly.

* * *

THE city of Chicago consumes more gas than the combined consumption of Italy, Holland, Switzerland, Norway, Sweden, and Czechoslovakia.

* * *

THE busiest hour for business telephone communication occurs between 10 A. M. and 11 A. M., the busiest moment coming almost exactly at 10:30.

Remarkable Remarks

J. J. Bernet
President, Chesapeake & Ohio Railroad.

"Kid the other fellow if you want to, but don't kid yourself; there's nothing in it."

Newcomb Carlton
President, Western Union Telegraph Company.

"The British merger (of the wire and radio facilities) is one of the most fantastic bogies ever built up."

Norman Thomas
Late Socialist candidate for Governor of New York.

"The most effective regulation of rates in the interest of the consumer is found in publicly owned and operated plants."

Floyd W. Gibbons
Economist and editor.

"Although the manufacture and distribution of gas is a century-old business, it is one line of activity that is on the eve of a great revolution."

Franklin D. Roosevelt
Governor of New York.

"Whether mere regulation of electric utilities in the future can be made more successful than it has proved in the past remains a serious question."

Samuel Insull
Chairman, Middle West Utilities Co.

"Every schoolboy ought to know that there is no connection between capitalization and [utility] rates. Rates are based upon 'the fair value of the property used and useful in the service.'"

W. W. Atterbury
President, Pennsylvania Railroad.

"The wisest students of human affairs are agreed that wherever statute law and economic law are in conflict economic law finally prevails—a good thing for the human race."

Henry Ford
Automobile manufacturer.

"The public-be-damned policy which used to be characteristic of private corporations is now more generally found at the counters of government-owned concerns whose patronage does not depend on serving and pleasing the public."

H. M. Hyde
U. S. Secretary of Agriculture.

"I am advised that the operation of the government nitrate plants [at Muscle Shoals] can be of little, if any, material value in lowering the cost of fertilizer to the farmer."

FRANK B. JEWETT
President, Bell Telephone Laboratories.

"Unless someone invents a new method of radio transmission, radio will always be in the position of a pioneer, to be displaced by wires as soon as the economic situation warrants."

HENRY FORD
Father of the Tin Lizzie.

"The electrical industry should have freedom from interference so long as it serves adequately. The electrical industry is too great and its possibilities too vast to be endangered by minds not geared to modern industrial initiative."

MICHAEL GOLD
Editor the "Masses."

"Utility, propaganda, will create a beauty of form in the proletarian poems, plays and novels of the future. In Soviet Russia this is already true. The great Russian films are all propaganda films built up on significant facts."

W. W. ATTERBURY
President, Pennsylvania Railroad.

"The great combinations of industrial enterprise, once feared and antagonized under the name of trusts, are now recognized as among our greatest national assets and absolutely necessary to maintenance of our place in the world's trade."

FRANKLIN D. ROOSEVELT
Governor of New York.

"Let us stop once and for all the silly talk that the electricity available by developing the St. Lawrence is not needed or not usable in a practical way. We know that private companies are only too eager to proceed if the State were to abandon its rights."

MATTHEW S. SLOAN
President, National Electric Light Association.

"The power and light industry and the laws under which regulation is carried on are being investigated by various official bodies. There can be no proper objection to that. If evils exist within the industry which its own members cannot or will not rectify, they should be exposed and cured by public authority."

FLOYD W. GIBBONS
Economist and editor.

"The gas industry is justified in believing that it is more economical to manufacture gas in one big plant, operating at high efficiency, and then send this gas through high-pressure mains to a number of nearby towns, than to make gas in small plants in each of these towns."

Are the Courts Thwarting the Purposes of the Legislators?

An analysis of the original intent of the state legislatures as viewed in the light of the decisions rendered by Federal judges.

By HENRY C. SPURR

ONE of the interesting standardized statements against Commission regulation now being circulated is that the original purpose for which the Commissions were created has been lost sight of.

The courts—especially the Federal courts—are said to be to blame for this. The legislatures wanted the Commissions to do one thing. The courts have made them do another.

So it is said.

What the legislatures expected was that the rate base would be fixed at the prudent investment in utility property. The Federal courts, by a piece of judicial legislation, have held that the utilities have a right to return on the present value of their property; therefore, the will of the people has been thwarted.

Such is the assertion.

FRANKLIN D. Roosevelt, Governor of New York state, for example, in a recent article in the *Forum*, says:

> "While in many instances the actual language creating these Commissions was ill defined, nevertheless the purpose of the language was fully clear to the average citizen. This purpose was to grant rates to the public utility company which would net to it a reasonable return on the investment made by the bondholders and stockholders of the company, that investment representing the actual cost of the land involved and the structures on it, the cost of the machinery, and reasonable amount for depreciation and for necessary operating capital."

Governor Roosevelt's idea is that under the investment theory the stockholders would get a reasonable return only on their equity in the property. Their profit, if any, would be on the amount of their own money in the property. If, to take the illustration that he himself uses, a utility plant costs $1,000,000 and the securities consist of $700,000 in bonds and $300,000 in stock, under the investment theory the rate base would be $300,000, not $1,000,000.

His statement is that the purpose of the legislatures to limit the return to the investment—that is to say, the stockholders' equity—was "wholly clear to the average citizen."

Other critics of state regulation likewise blame either the Commissions or the courts for disappointing the expectation of the people that the invest-

ment theory of rate making would be adopted. The legislatures may have used ill defined language but their purpose was reasonably clear.

That is what some of the critics, at least, keep on saying.

We shall not discuss the merits of the prudent investment or the value theories of rate making. There would be something to be said for each, if the question were open. We shall in this article merely consider the question whether the original purpose of the lawmakers was to set up the prudent investment theory of rate making and, consequently, whether statements to the effect that this was the original purpose and that this original purpose has been lost sight of are true.

Let us start from rock foundation.

The rule at common law was that the rates of those engaged in public callings must be reasonable. It was the ancient law that a man could fix what price he pleased for the use of his own property for private purposes, but that if the public had a right to resort to his premises and make use of them, and if the owner had a monopoly in them for that purpose, he must, as an equivalent, perform the duty attached to it on reasonable terms.[1]

The rule then was that the service must be furnished on reasonable terms. As we say today, the rates must be reasonable.

But what were considered reasonable terms or rates? Certainly nobody had heard of the investment or the value theories of rate making in those days. Nor was there any difficulty about watered corporation stocks. Reasonableness was probably determined mostly by comparisons of rates and consideration of the value of the service rendered. There was no disposition to measure the reasonableness of charges of those engaged in public service by the yardstick of profit for a good many years.

When corporations came and when the profit method of determining reasonableness of rates finally emerged, it was first maintained that the return or profit should be limited to reasonable dividends on the stock. An early English view of this suggestion was unfavorable.

In the report of the select committee to Parliament in 1872, in response to a proposal to limit dividends, it was said that the proposal to limit dividends implied that the authority to which revision was committed could judge what rates would enable the company to make the given dividend on a given capital; that this was a function which no government department ought to undertake; that it involved the necessity of determining what were the proper expenses of the companies, and what economies they could practice; that these were matters which required the knowledge, skill, and experience of the managers themselves, and that any attempt on the part of any government department to do it for them was impossible, unless the agents of the government were to undertake an amount of interference with the internal concerns of the companies which was neither desirable nor practicable.[2]

[1] Aldnut *v.* Inglis, 12 East, 527, 537.

[2] Boyle & W. R. & Canal Traffic, 47.

What the Original Intent of the Commission Statutes Really Was:

"WHEN the Public Service Commission statutes were passed the people were then concerned with assertions that the utilities were charging exorbitant rates and earning returns on watered stock; they wanted to stop this by limiting the return to the actual value of the property and, therefore, provided for valuation. It had not at that time occurred to them that the return in periods of high values might be limited to the actual investment in the property."

The contention of the railroads in the case of Smyth *v.* Ames[3] which has come in for so much criticism of late—the case in which the value rule was first laid down—was that:

> "A railroad company is entitled to exact such charges for transportation as will enable it, at all times, not only to pay operating expenses, but also to meet the interest regularly accruing upon all its outstanding obligations, and justify a dividend upon all of its stock; and that to prohibit it from maintaining rates or charges for transportation adequate to *all* those ends will deprive it of its property without due process of law and deny to it the equal protection of the laws."

THIS was the capitalization base theory of rate making, about the only theory known at that time (1897). It has been the Massachusetts theory of rate making for many years. But if such a theory were adopted without rigid control of security issues, it would permit of earnings on watered stock. There had been no such control of security issues in the case of the railroads involved in that suit. It was contended that there was plenty of water in their stock. Therefore, the capitalization theory was vigorously opposed by the shippers in that case. What the feeling of the shippers was at that time may be gained from the argument in their behalf by John L. Webster. He said:

> "Why, may we not ask, should the public bear the burden imposed by 'injudicious contracts' or 'poor engineering' or the 'unusually high price paid for material' or the 'rascality on the part of those engaged in the construction or management of the property?' The public had nothing to do with any of these. The public did not invest upon such chances. The public can justly be called upon to pay such reasonable rates as will yield a reasonable compensation for the use of the fair and reasonable value of the property,' and not more."

Again he argued:

> "Then, if railroading is a business, and no one would dispute it, we can see no reason why it should not be governed by the same rules of law as any other business is in determining what is and what is not a reasonable compensation."

[3] 169 U. S. 466, 543, 42 L. ed. 819, 18 Sup. Ct. Rep. 418.

WILLIAM J. Bryan also argued on behalf of those opposed to the claim of the railroads. One of his leading points was that the present value of the roads, *as measured by the cost of reproduction,* is the basis upon which profit should be computed. In the course of his argument he said:

> "The ordinary business man cannot avail himself of watered stock or fictitious capitalization, nor can he protect himself from falling prices. If his property rises in value, he profits thereby; so do the owners of a railroad under similar conditions. If his property falls in value, he loses thereby; so must the owners of a railroad under similar conditions, unless it can be shown that railroad property deserves more protection than other forms of property."

THIS is a very clear picture of what "the people" at that time thought the rate base should be. They believed that they would be protected from "exorbitant" rates if the return could be limited to "the fair and reasonable value of the property." The Supreme Court sustained that contention and the case was, therefore, a great victory for the people on this particular point.

For a number of years after that decision was rendered, valuation of utility property was popularly considered to be the solution of the rate problem.

THE modern Public Service Commissions began to be established in 1907. In that year Wisconsin made over its old Railroad Commission into a modern Commission. This was under the leadership of Governor La Follette. Valuation of utility property was the cornerstone of that law.

> "Up to 1903 the railroads of Wisconsin were not valued for taxation purposes as other properties. They paid taxes in the form of license fees upon their gross earnings. A report of the State Tax Commission showed that the railroads paid only .53 per cent of their market value (gauged on average value of stocks and bonds) in taxes, while the farmers, manufacturers, home owners, and others paid 1.19 per cent, or over twice as much. Such a disclosure finally resulted, after a bitter fight, in the passage of the ad valorem taxation law, which provided for the physical valuation of the railroads of the state, and the taxation of them on the same basis as general property. The immediate effect was to increase railroad taxes more than $600,000 annually. Physical valuation was made the foundation stone of the Railroad Commission Law enacted two years later. The valuation theory has since been extended, both for taxation and rate-making purposes, to the other public utilities of the state."[4]

One of the first cases decided by the Wisconsin Commission under the new law had to do with the reasonableness of a 3-cent railroad fare.[5] Among other things the Commission held:

> "In order to determine whether or not a given rate is excessive or otherwise it is necessary to ascertain (a) the reasonable value of the property of the carrier as a basis for the allowance of income for investment."

The Commission fixed a fare of 2½ cents a mile as reasonable. The legislature, however, at once overruled the

[4] Holmes on *Regulation of Railroads and Utilities in Wisconsin* (1915) p. 21.
[5] Buell *v.* Chicago, M. & St. P. R. Co. 1 Wis. R. C. R. 324.

Commission and established a 2-cent fare. Commenting on this situation in 1908 a writer in position to know the facts said:

> "When Governor La Follette, in 1903, proposed to the Wisconsin legislature an expert valuation of the cost of construction of railway property for the purpose of regulating rates, the outcry was bitter and panicky.
>
> "Four years later when the law was extended to all other public utilities in the state, the corporations accepted physical valuation as essential. They had just seen the difference between a rate based on physical valuation made by experts and a rate based on resentment and retaliation.
>
> "The Railroad Commission appointed by Governor La Follette with the aid of the Tax Commission, had finished its careful valuation of the St. Paul Railway and in view of that valuation had declared that passenger fares could not reasonably be reduced below 2½ cents a mile. But the legislature a few months later, provoked by some petty regulations of the roads in changing their rates and in imitation of the action of other legislatures, overruled the Commission and reduced fares to 2 cents a mile.
>
> "The La Follette leaders protested and the corporations then realized that physical valuation, instead of a scheme to rob them, was intended to be a means of dealing honestly with them. In the heat of the contest the railroads had paid attention only to Governor La Follette's charges of excessive rates, overcapitalization, and discrimination." [6]

How important valuations were regarded in those days may be appreciated by what this writer said in the same article regarding it:

> "The profound significance of physical valuation is that it carries publicity to its logical conclusion. It has already been settled that the bookkeeping of public service corporations shall be uniform and open to the public. But this alone gives only income and operating account. Physical valuation gives the true capital account. This enables the people to know all the facts on which reasonable rates must be based. By knowing the physical value they know exactly how much is allowed for good will and other intangible values. Knowing these facts they can be trusted to be reasonable. The bulk of them are property owners and they do not believe in confiscation." [6]

The people's side as well as the corporation's side of the case is thus stated:

> "Physical valuation of corporate property is not only the people's protection against abuse, it is the corporation's protection of honest capital." [6]

That is what the progressives thought of the advantages of valuations of utility property back in 1908. It must be remembered that there was plenty of talk at that time about extortionate rates and watered stock. The people, therefore, demanded valuation. The idea of limiting the utilities to a return on less than the fair value of their property had not yet appeared on the horizon, either as a black cloud or as a cloud with a silver lining,—according to the viewpoint.

We are now in position to test the truth of the assertion that it was the original purpose in establishing the Commissions to have the reasonableness of rates measured by the invest-

[6] Physical Valuation of Public Utilities by John R. Commons, Professor of Political Economy, University of Wisconsin (1908), The Independent, Vol. 65, p. 582.

Was the Purpose of the Commission Laws to Limit the Return to the "Prudent Investment?"

"THOSE who object to the present value basis of rate making sometimes say that valuations were provided for (in the Commission laws) merely because of the difficulty or impossibility of ascertaining what the prudent investment, in some cases, was.

"But the answer is that there is no evidence in the statutes themselves to show that such was the intention."

ment of the stockholders, rather than by the value of the property devoted to the service. Without looking at the statutes, the presumption would be against the soundness of Governor Roosevelt's conclusion that it was the purpose of the lawmakers to set up the prudent investment standard because:

(a) The statutes were enacted at a time when the popular demand was for valuations of utility property.

(b) The law of the land was that utilities are entitled to earn a return on the value of their property. That rule had been laid down by the Supreme Court at the behest of shippers. It was the people and not the railroads who had asked for it.

(c) Legislatures must be presumed to have known the law of the land and to have been aware that legislation designed to make prudent investment the rigid rate base would have been futile, even if there had been any demand for such a rate base at that time.

THE presumption that it was not the intention of the legislatures to establish the investment theory is borne out by an examination of the statutes. These acts show clearly enough what the legislature had in mind at that time. The New York statutes for many years has contained these provisions:

> "[In determining rates of common carriers, railroad and street railroad corporations] the Commission shall with due regard among other things to a reasonable average return upon the value of the property actually used in the public service [fix reasonable rates]. . . .
>
> "The Commission shall with due regard among other things to a reasonable average return upon the value of the property actually used in the public service . . . for the performance or rendering of the service [fix reasonable rates for telegraph and telephone companies]. . . .
>
> "In determining the price to be charged for gas or electricity the Commission may consider all facts which, in its judgment, have any bearing upon a proper determination of the question although not set forth in the complaint and not within the allegations contained therein, with due regard among other things to a reasonable average return upon capital actually expended and to the necessity of making reservations out of income for surplus and contingencies."[7]

[7] Laws of 1910, ch. 480, § 49 (1), § 97 (1), and § 72

It will be observed that in none of these provisions is there any requirement that the return shall be fixed by the prudent investment in the property, nor is there the slighest intimation that the return shall be limited to the stockholders' equity in the property.

If it had been the intention of the legislatures to set up the prudent investment basis of rate making it would have been easy enough to have done so. The intention of the lawmakers cannot be shown by mere statements of belief of the advocates of the prudent investment theory. The members of the legislatures themselves would be incompetent witnesses as to their intentions in enacting the law. The statutes furnish all the evidence needed to determine the truth or falsity of the claim that there was any intention to set up the prudent investment theory; and the statutes are, of course, the best evidence.

To quote from all of the state statutes providing for the valuation of utility property for rate-making purposes would unduly extend this article. A few of the early statutes will suffice.

Kansas required the Commission to ascertain the reasonable value of all property of every common carrier or public utility used or required in its service whenever it deemed the ascertainment of such value necessary to enable the Commission to fix fair and reasonable rates, etc.[8]

It was provided in Massachusetts that the Railroad Commission, in fixing or changing rates of carriers, should give due regard, among other things, to a reasonable return upon the value of the carrier's property.[9]

Michigan required its Commission, among other things, in determining the reasonableness of rates, to consider the reasonable return on actual value of all property used in the service.[10]

North Carolina provided that in fixing rates of common carriers the Commission should take into consideration, if proved, or might require proof of, the value of the property of the carriers.[11]

The provision in Ohio was:

> "The Commission shall, with due regard among other things, to the value of all of the property of the public utility actually used and useful for the convenience of the public, excluding therefrom the value of any franchise . . . [fix reasonable rates]." [12]

Prior to 1915 the State Commissions were given the power to value the property of public utilities, or were required to do so, in the following states: Arizona, Arkansas, California, Florida, Georgia, Kansas, Maryland, Massachusetts, Michigan, Minnesota, Nebraska, New Jersey, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Washington, and Wisconsin. In fact no modern Public Service Commission law has been considered complete without this provision for valuation.

In the face of such evidence as this can it be said that the original purpose of the Commission laws was to limit the return to the prudent investment?

[8] Laws 1911, ch. 238, § 28.

[9] Acts 1911, ch. 755, § 1.
[10] Public Acts 1909, No. 106, § 7.
[11] Laws of 1908, § 1104.
[12] Laws 1911, No. 325, § 25.

None but the most enthusiastic advocates of that theory would say so.

THOSE who object to the value basis of rate making sometimes say that valuations were provided for merely because of the difficulty or impossibility of ascertaining what the prudent investment, in some cases, was; but the answer is that there is no evidence in the statutes themselves to show that such was the intention.

If that is what the legislatures meant by these elaborate provisions for valuation, how easy it would have been to have made that intention clear. They could have declared that reasonable rates shall be based upon a reasonable return on the prudent investment in the property when this can be ascertained; that if the investment cannot be ascertained an inventory of the company's property shall be made by the Commissions for the purpose of estimating the amount of the prudent investment. The legislators might have provided that in no case shall the return be based upon the present value of the property where the prudent investment can be ascertained or estimated. That would have been a lucid declaration of legislative purpose to establish the investment theory.

THE declaration of some of the early Commissions that the only purpose of valuing utility property was to establish a rate base in cases in which the original cost of the property through loss of records could not be ascertained, was merely a conclusion.[13] It was not supported by anything to be found in the statutes. A historical survey of the popular demands at the times the statutes were enacted would have disproved such a theory.

As Professor Commons stated, physical valuation on the one hand was regarded as the people's protection against abuse and on the other as the corporations' protection of honest capital. It was not until present value began to exceed the original cost of the property that the outcry against the injustice of the value rate base arose.

AS previously stated, we are not considering the respective merits of the prudent investment or value theories of rate making. It has been our purpose merely to point out that when the Public Service Commission statutes were passed the people were then concerned with assertions that the utilities were charging exorbitant rates and earning returns on watered stock; that they wanted to stop this by limiting the return to the actual value of the property and, therefore, provided for valuation; that it had not at that time occurred to them that the return in periods of high values might be limited to the actual investment in the property.

The utilities and the ratepayers have changed positions on the rate base question. If there is anything wrong with the value theory, neither the courts nor the Commissions are wholly to blame for it. It was established in the first instance on the plea of the ratepayers who wanted it and who got it.

[13] Such might be the construction put upon Professor Commons' language in the opening paragraph of his statement (p. 93), although it is probably not what he had in mind as it is contrary to the Wisconsin statute.

As Seen from the Side-lines

TAKE the interesting case of Mr. Joseph B. Eastman, of Boston, Massachusetts.

WHEN his term expired as Interstate Commerce Commissioner, it was fully, freely, and confidently predicted that he would fail of reappointment. He was an unregenerate radical, it was said, a person who believed in some forms of public ownership of public utilities. Yet he was recommended for reappointment to President Hoover by such convinced opponents of public ownership as the Baltimore & Ohio Railroad, the United States Steel Corporation, the Associated Industries of Massachusetts, and by accredited agents of the National Sugar Refining Company and the American Smelting & Refining Company.

HE was such an independent person in politics that he rarely if ever identified himself as a member of either of the two old-line political parties, it was contended. And we find him indorsed for reappointment by such divergent political spirits as United States Senators Carl Hayden of Arizona and Kenneth McKellar of Tennessee, progressive democrats; United States Senators Arthur Capper and James Couzens, progressive Republicans; United States Senators Arthur Gould of Maine and George H. Moses of New Hampshire and Hiram Bingham of Connecticut, all of them unplastic Old Guardsmen, and not to mention United States Senators Deneen and Glenn of Illinois and Republican National Committeeman Louis K. Liggett of Massachusetts, as regular as the clock in the stern Republican fold.

WE were told that in some of the railway wage disputes of earlier days his verdicts were not always satisfactory, that is, completely satisfactory, to the employees. And we see him indorsed by all the railroad brotherhoods and by such liberal labor organizations as the International Association of Machinists.

WE see him endorsed by the Swift Packing interests, and we see him approved with equal fervor by the representatives of the Independent Packers' Associations. We see him commended for reappointment by railroad and banking interests, and we see him urged with unrestrained fervor by such agencies of influential shippers as the Kansas Co-operative Wheat Marketing Association, the New England Demurrage Commission, the Cadillac Motor Car Company, the Southern Minnesota Mills, the Indiana Chamber of Commerce, and the Southern Highway Traffic Association.

YOU may think it somewhat unexplainable to find both railroads and their inherent complainants, the

shippers, desiring that this man should serve as a judge in matters affecting their joint interests. If so, tackle this seemingly unsolvable riddle: Mr. Eastman first came into prominence as an expert on public utility problems by association with Louis B. Brandeis, in the latter's attacks upon the Boston and Maine and the New Haven Railroads which had gone to pot for a time and were consequently depriving the great New England territory of the transportation so sorely needed.

YET the very railroads which Brandeis and Eastman then denounced urged Mr. Eastman's reappointment to the Interstate Commerce Commission by President Hoover.

MR. Eastman has filed as many dissenting opinions from the majority decisions of the Interstate Commerce Commission as Messrs. Holmes and Brandeis have from their colleagues on the United States Supreme Court. And we find his associates recommending him for reappointment, and their approval supported by such former members of the Commission as Past Chairmen John J. Esch and Mark W. Potter. We see Mr. Eastman approved by President Charles Webster of the National Association of Railroad and Public Utilities Commissioners, by John E. Benton, who represents their manifold interests down in Washington, and with equally unabated enthusiasm by James P. Chatford, Chairman of the Railroad Owners' Association.

Now, what is the mystery of all this? What is the answer to this riddle that is surfaceally unexplainable as the appearance of an Al Smith at a Republican victory celebration?

THE answer is Mr. Eastman himself, the qualities he possesses, and the hard, common sense of those who have happened to come into contact with him. Mr. Eastman is one of the ablest men who ever has served upon the Interstate Commerce Commission. That outstanding fact was conceded by all. His liberal views are honest views. His honesty was deeply appreciated by those who decline to accept his philosophy. He is a modest man, with none of swashbuckling or demagogery. Resultantly, he won the social respect of those who found it difficult to accept his decisions. He is an indefatigable worker, and his decisions, even in dissenting, usually contained information and deductions which proved to be of corrective value to those against whom they were addressed.

EASTMAN pandered neither to the mob nor to the executives. He did not strut upon the stage, nor demand the calcium. He was neither offensive nor yielding. He was himself.

THAT'S the answer to his reappointment.

John T. Lambert

OUT OF THE MAIL BAG

A Corollary to Henry Ford's Remark

As a corollary to the "Remarkable Remark" of Mr. Henry Ford, in the October 3, 1929, issue of PUBLIC UTILITIES FORTNIGHTLY, in which he states:

> "Our national power system will become a unit, just as our postal system is."

I might offer the following:

> "Our national power system will become a unit, supported by taxation rather than by those who receive the service, just as our postal system is."

—JOHN A. BOUVIER, JR.
Institute for Research in Land Economics and Public Utilities, Chicago, Ill.

Uniform Power Rates in Alabama

IN the October 3rd issue of your magazine appears an article under the heading "Is There a Trend Toward Statewide Uniform Rates?" In the article mention is made of the fact that a statewide promotional rate was ordered into effect some months ago by the Georgia Public Service Commission, and this is followed by some statements by that Commission justifying the statewide rate on account of the merging of electric properties.

After this the following startling statement appears:

> "There is reported a similar movement afoot before the Alabama Public Service Commission, and there have been press reports of similar agitation in North Carolina."

The Alabama Commission issued its order prescribing a statewide uniform rate for domestic customers of the Alabama Power Company on December 31, 1928, and discussion of this rate has appeared in columns of your magazine more than once. The order did not affect the rural rates, nor an intermediate rate which had been prescribed for certain small villages. With these exceptions it applied to all domestic customers of the Alabama Power Company save those who, within a given period of time, elected to remain under their old rates. For these reasons my Commission is unable to understand why it is that you state a similar movement is afoot before the Alabama Commission. It is true that the Commission now has before it for consideration a report of its Chief Engineer, recommending a uniform power rate and a uniform rate for retail and commercial lighting customers, but in so far as the uniform statewide rate for domestic consumers is concerned this was put into effect, as stated above, by this Commission on December 31, 1928.

It may be of interest also to call your attention to the testimony of Dr. John Bauer (quoted below) in a recent hearing before this Commission concerning the report of our Chief Engineer referred to above. In this hearing Dr. Bauer took the position that traffic density in the larger cities entitled them to lower rates than the smaller cities, towns, and villages. However, in a discussion which took place concerning our residential rate order Dr. Bauer made the following statements—a copy of these statements is enclosed.

If the statement from your magazine meant that a similar movement was afoot before the Alabama Commission concerning power and commercial lighting, you are correct, but from the reading of the article and inasmuch as this statement so closely follows the reference to the Georgia Public Service Commission's residential rate order, it appears to me that the statement referred to residential rates. If I am correct in this assumption won't you kindly carry either my letter and Dr. Bauer's testimony or a statement of your own which will clarify the matter?

—FRANK P. MORGAN,
Associate Commissioner, Alabama Public Service Commission.

(EDITOR'S NOTE: *The movement before the Alabama Commission referred to in our October 3rd editorial applied only to uniform power rates. Commissioner Morgan's letter ably clarifies this situation in Alabama.*)

THE TESTIMONY OF DR. BAUER BEFORE THE ALABAMA PUBLIC SERVICE COMMISSION

(Dr. John Bauer is a director of the American Public Utilities Bureau of New York, an organization that concerns itself with the protection of the public against high electric rates throughout the country, and Dr. Bauer is said to be one of the foremost electrical rate experts in the world. Dr. Bauer's statement came as the result of questioning by Associate Commissioner Frank P. Morgan. The stenographic account of the sworn testimony of Dr. Bauer follows:)

SWORN TESTIMONY

COMMISSIONER MORGAN: "Have you ever compared the residential rate ordered into effect by this Commission for the state of Alabama, or the most part of it at least, with the residential rate in effect in New York city?"

DR. BAUER: "I think your general residential rates that you have put into effect under your A–1 schedule are lower than in New York city at the present time, and considerably lower than the generality of rates throughout the state of New York."

COMMISSIONER MORGAN: "Do you know of a statewide rate in the United States as low?"

DR. BAUER: "I don't know of any, nor have I made a comparison so that I really could answer; but as a statewide residential rate, taking into account the steps, I think it is probably a lower average residential rate than applies anywhere else. I don't know of any case where there is such a complete unification in the same company; but my impression is that you have here in the residential rate probably the lowest general rate, so far as the average person is concerned, in the country or very close to the lowest. And then you have a very low rate for promotional purposes."

The O'Fallon Case Made Clear

. . . It is safe to say that the vast bulk of newspaper readers still have not the slightest idea of what the O'Fallon case was about, and it is for that reason that I am going to try to explain it, hoping to render it clear to those who have no time to waste reading long, arid judicial decisions. I wish I could draw better, I'd illustrate it.

The $20,000,000,000 O'Fallon Case had its origin one day in the spring of 1921 when a Pullman diner named Yvette went around a curve on a railroad in Southern Nebraska. At a table in the Yvette sat a woman named Virgie O'Fallon, wife of Sanderson M. O'Fallon, wealthy idler of Chicago. Mrs. O'Fallon, or Virgie, as Justice Taft calls her in his decision, was on her way West from Chicago to visit some folks named Clancy, whom she and her husband had met at Ausable Chasm the previous summer.

Prior to leaving, Sanderson O'Fallon had said to Virgie (fatal words!) "You want to look nice now, Virgie, and you mustn't let Nell Clancy get ahead of you. Here is $20,000,000,000. Go out and buy yourself a new dress."

Virgie O'Fallon went out and bought herself a new gown, which had been marked down from $30,000,000,000 to $23,000,000,000. She finally talked, or "o'falloned" (as the phrase goes) the couturier (whoopsie!) into selling her the gown for $20,000,000,000. It had a good deal of passementerie (braids, cords, gimps, beads, and tassels) on it, and it was the passementerie that ran into real money.

It was this gown that Virgie was wearing at breakfast that memorable morning on the Yvette, as the train raced through (or around the hills of Nebraska. The Yvette rounded a curve. Alas, that at that moment Mrs. O'Fallon should be having her morning soup. She had had her pie and beefsteak and was slaking her thirst with a bowl of soup while waiting for the next course, a veal stew.

The soup spilled all over the $20,000,000,000 gown. Virgie arose in a great huff and left the train at the next station. She wired her husband, who immediately raced to her side and shot four of the vice presidents of the railroad. However, as they say, "—— hath no fury like a woman scorned," and nothing would satisfy Virgie except a suit in chancery. So Sanderson O'Fallon then brought the famous $20,000,000,000 action against the railroads, to recover the damages to the soup-stained gown.

Virgie was upheld by a majority of the court, Justices Holmes, Brandeis and Stone dissenting. It was, however, proved during the trial of the case that the dissenting Justices had never had soup spilled on their august persons while eating in a diner rounding a curve.

The Supreme Court did more. It added a codicil to its decision stipulating that any drummer who whistles while shaving in a Pullman washroom in the morning, or who hogs the washbowl for more than twenty minutes, shall be dropped from the train at Terre Haute.

There, in a nutshell, is the story of the O'Fallon Case.

—FRANK SULLIVAN
(in "The World," New York)

What Others Think

Compulsory Arbitration of Disputes Between Public Utilities and Their Employees

THE relations between capital and labor is an ever present question of importance. It is of especial importance in the utility industry because of the public obligations involved. Says E. W. Morehouse, Associate Professor of Economics, Northwestern University:

> "Probably the most important single problem of this nature is whether or not the dependence of consumers upon utility services necessitates placing labor relations on a different basis from that in private industries. Does this dependence, for example, justify compulsory arbitration of labor disputes; does it justify prohibition of strikes, a policy of individual bargaining as opposed to collective bargaining with independent trade unions or offers of labor contracts on terms less favorable than in nonutility industries; or should the jurisdiction of regulatory agencies be extended definitely to include supervision of labor relations?"

PROFESSOR Morehouse says that the strongest argument against compulsory arbitration is that it is unworkable. Concerning managerial policies he says:

> "Where collective bargaining with an outside union is not the policy, most of these activities are carried on through an employee representation plan for the adjustment of wages and disputes regarding discipline and an employee's benefit association for the administration of savings, insurance, and pension funds, loan funds, and recreational activities. Through the latter agency the utility affords the means, sometimes contributory, sometimes on a gratuity basis, of financing the chief hazards of a worker's life; namely, interrupted earnings caused by sickness, accident, death, old age, and in rare cases unemployment. All these detailed managerial policies may be summarized in the statement that their underlying purpose is to substitute for legal compulsion the moral obligations and pecuniary advantages of loyal, continuous, and efficient service to the company; they constitute the means whereby management induces employees to recognize and assist it to meet its obligations to consumers.
>
> "From this standpoint the managers of utilities might be said to act as joint agents of owners and consumers in dealings with their employees. Taking this view, equitable labor relations become one of the obligations of management to consumers, and the latter, through their representatives are in a measure responsible for fair treatment of labor. Where the interests of owners and consumers clash, however, the joint responsibility of management tends to give way to the single responsibility to owners. This is the feature of utility labor relations that at the bottom has produced most difficulties. From the public standpoint, a frank and unwavering adherence to the attitude that management has joint responsibilities in labor relations is much to be desired. Were managements sincerely and honestly to adopt this view, the tension, hostility, and under-cover distrust that characterize the industrial relations of many utilities would be greatly reduced."

THE BACKGROUND OF LABOR RELATIONS OF PUBLIC UTILITIES. By E. W. Morehouse. *The Journal of Land and Public Utility Economics*, Vol. 5, No. 4; p. 412.

The Federal Power Commission Would Leave Utility Regulation to the States

THE Federal Power Commission is of the opinion that public utility regulation should not be undertaken by the Federal Government, but should be left to the states, for the reason that it is primarily a local matter. The Com-

mission explaining its position states:

"It seems clear, therefore, that Congress thought of the control of electrical utilities as a local problem and that the imposition of a superior authority would be needed only in the event of disputes between states. Doubtless it was recognized that electric power must of necessity be used in the immediate vicinity of its production and that its transportation lacks the complicated interstate relations affecting large groups of states, as in the case of railroad transportation. Being a local problem, it was considered that its control might best be attained by local responsibility and local opinion.

"During the nine years that have passed since the enactment of the law its administration has suggested no need for altering the present scope of its regulatory provisions. Necessarily the activities of this character have been small under the limited jurisdiction conferred. Practically all of the states in which power plants are being operated under license authorization have duly constituted agencies to control the service rendered and rates charged to consumers."

This accords with the views of the State Commission.

NINTH ANNUAL REPORT FEDERAL POWER COMMISSION. November, 1929.

The Effect of Regulation on American Railroads

THE United States has a far greater net and railway traffic than any other country, according to the *Commerce Yearbook of 1929*. In 1926, on the basis of reports covering probably 95 per cent of the railway mileage of the world, the United States had more than one-third of the total mileage, and its railways transported more than one-third of all the freight carried. Since the prevailing length of hauls in the United States is much greater than in most other countries, the proportion of world ton-mileage of freight falling to this country is much higher still. The United States has about 21 miles of railway line per 10,000 inhabitants, while the average for all countries for which statistics are available is about 4¼ miles. It has about 82 miles of line per 1,000 square miles of territory as compared with an average of 18½ miles for other reporting countries.

As to rates, it is stated that since the reductions of 1922 no sweeping changes have occurred in either freight rates or passenger fares, although slight adjustments in rates have been made within certain territories on certain commodities; that for the most part changes in total railway revenues during the last few years reflected changes in volume, distance hauls, or character of freight and passenger traffic.

In regard to legislation, it is stated:

"While a large number of bills and resolutions affecting interstate transportation were introduced in the Seventieth Congress, legislative action was taken on only a small number. Proposed legislation for voluntary consolidation of the railroads into a small number of systems was further discussed, and though bills were introduced in both Houses of Congress, no law was passed. The most important legislation affecting railways was the law hereafter mentioned relating to the Inland Waterways Corporation, which gave a mandate to the Interstate Commerce Commission to order the rail carriers to establish through routes, joint rates, and differentials between connecting rail carriers and the Government barge lines. Under this law the Commission has issued its orders to the rail carriers.

"Certain acts by the Canadian Parliament and certain decisions of the Railway Commissioners for Canada which resulted in reduced rates, particularly on farm products, in Canada, drew the attention of Congress to the relative rates between the United States and that country, and resulted in the passage of three resolutions by the Senate directing the Interstate Commerce Commission to investigate this subject and report to Congress, and to make such adjustments as might be lawful and still retain compensatory rates, with a view to equalizing the rate systems in the two countries. These resolutions have been complied with.

"There was further discussion of proposed legislation to regulate motor vehicle transportation in interstate commerce, but no action resulted."

THE following summary of operating receipts for 1928 shows that

economy and efficiency has risen to a higher level than ever before. Railway freight traffic during 1928 increased slightly as compared with 1927, but did not equal that of the peak year 1926. Revenue ton-miles of Class I railways were 1 per cent greater than in 1927. While their operating revenues decreased by 0.5 per cent (and were also slightly less than in 1923), operating expenses were reduced by 3.3 per cent. The net operating income increased 9.7 per cent in contrast with the decline of 12 per cent in 1927 as compared with 1926. Freight and passenger rates remained practically unchanged as evidenced by the average revenue per ton-mile and per passenger-mile. The operating ratio for Class I railways during 1928 was 72.45 per cent, the lowest in any post-war year. Their net railway operating income was 5.4 per cent of the aggregate tentative valuation of December 31, 1927; this ratio for the southern district was 5.8 per cent; for the western district 5 per cent; and for the eastern district 5.5 per cent.

Economy and efficiency, which have been particularly noticeable in the operation of the railways since 1922, reached a higher level. The movement of goods was conducted with the greatest rapidity in railroad history; gross ton-miles per train-hour showed an increase of 59 per cent as compared with 1920. The concerted effort to handle traffic without delay or interruption continued. All car requirements were met without car shortages. The percentage of unserviceable equipment, although slightly higher than in 1927, was lower than in any other recent year surveyed.

COMMERCE YEARBOOK, Volume I. Washington, D. C. United States Department of Commerce. 720 pages. $1.00. 1929.

The Advantages and Disadvantages of Federal Regulation of Holding Companies

VARIOUS proposals for the regulation of public utility holding companies have been made. These, as set forth by T. C. Bigham, Professor of Economics and Business, Arkansas University, are as follows: (1) Leave control as it exists at present; (2) form compacts for joint regulation among the states concerned; (3) delegate to the State Commissions the power to act as agents of the Federal Government in regulating interstate transmission; (4) extend the power of the Interstate Commerce Commission over interstate transmission; or (5) create regional Federal Commissions.

Professor Bigham favors Federal control of holding companies. Of this he says:

> "The proposals looking toward Federal control by regional Commissions or by a central board may be considered together. The plans are well-grounded in constitutional law; the transmission of power across state lines is interstate commerce, and the power of Congress over interstate commerce is supreme and plenary. Their advantages and disadvantages are fairly obvious. The foremost of the benefits is the promotion of uniformity of regulation which in turn would contribute to financial stability, prevent discriminatory state action, and foster freedom of trade. Regulation would be as broad as the industry. This advantage would be sacrificed in part were regional Commissions created instead of one central body, but regulation could still be kept uniform within a given region and appeal to a central body would provide a means for correlating inter-regional problems. Moreover, Federal Commissions would probably, although not necessarily, be superior to State Commissions in personnel; the tenure of office would be longer, the pay better, and the selection more exacting. Being further removed from local influences, their decisions would probably be less influenced by political considerations."

Of the disadvantages of Federal control, Professor Bigham says:

> "The outstanding disadvantage of Federal control is the unfamiliarity of Federal officials with local conditions. This disadvantage, however, would be offset in part by the creation of regional Federal Com-

missions; this would enable the carrying on of study at closer range. Furthermore, any successful scheme of regulation must rest upon co-operation between both Federal and state officials, and there seems to be no good reason why State Commissions should not aid in promoting a proper relationship between Federal regulations and local conditions. Federal control would, of course, meet opposition from state officials, because of their fear that their powers will be usurped by Federal officials, but it is not likely that this would occur to a greater extent than necessary to insure uniform and nondiscriminatory control. It is indeed possible that Federal control might keep many utility problems within the jurisdiction of State Commissions."

To the red tape argument the author replies as follows:

"It has also been urged that Federal regulation would mean more red tape and delay in getting decisions, particularly if control were lodged in the hands of the Interstate Commerce Commission. To this there are two answers: First, control need not be given to the Interstate Commerce Commission; instead a new Federal Commission might be created, perhaps along the lines of Senator Couzens' proposed Communications Commission. A separate Commission to regulate only interstate transmission probably would not be justified at present, but there is a crying need for controlling public utility holding companies in general. Second, the alternative of regional Commissions would have a further advantage in that many decisions would come from the Commissioners themselves rather than from the staff appointees of a centralized Commission. However, the necessity of appeal to a centralized body would arise. Moreover, while power developments are largely regional in nature, yet other holding company operations of which interstate transmission is but a part are not regional but national in nature; and inasmuch as it would not be economical at present to create Federal Commissions to control only interstate transmission, it is doubtful if regional Commissions would be as effective as a single Federal body."

REGULATION OF THE INTERSTATE TRANSMISSION OF ELECTRIC POWER. By T. C. Bigham. *The Journal of Land & Public Utility Economics*, Vol. 5, No. 4; p. 385.

The Yardstick or Public Utility Operations and Construction Costs

GROUPS of figures showing the results of public utility operations can have little significance unless a relationship between the figures is shown. Nor does the showing of such relationship in the case of a single company indicate its true position in the public utility field unless there is a standard which can be used for comparison. To furnish such a standard, William W. Handy, consulting engineer of Baltimore, has prepared a book under the title "The Yardstick of Public Utility Operations and Construction Costs."

The first part of the book shows, by means of charts of composite ratios, from 1911 to 1928 inclusive, the major financial and operating factors having to do with the operations of twenty of the major gas and electric operating companies in the country. The second part of the book presents, by means of index numbers, the trends in unit costs, during the same period, of all the major elements of construction entering into the building up of these utilities and explains in detail how these trends can be applied in determining values of properties at existing prices from historic or book cost.

Each chart shows the trend of public utility operations by lines representing the average operation, the maximum operation, the minimum operation, and the operation of a particular company investigated; and the author explains how an inquirer may apply these graphs in the study of any company which is to be investigated. The trends relate to relationships between property investment, revenues, expenses, capitalization, commodities sold, and customers served. Certain conclusions are drawn and comments made by the author.

For example, a rising tendency in the ratio between property investment and gross revenue is shown in the first

chart. It is pointed out that the companies are striving to offset this tendency through greater capacity per dollar of investment. The long swing downward in unit construction costs and equipment since 1924 aids in this. Then, too, through improved load factor better results are sought by means of greater off-peak use of domestic appliances.

It is said that every effort possible has been and is being employed to lower the operating ratio, which, while having no direct relation to the investment per dollar of growth, does directly affect the ratio of net to gross revenue. "However," says Mr. Handy, regardless of what the companies have done, "the rise in investment per dollar of gross since 1922 has not been checked, which means that rate reductions are going ahead faster than warranted, and that any drastic revisions downward are, to say the least, dangerous."

THE chart showing the ratio of operating expenses exclusive of taxes to operating revenue, indicates an apparent lack of improvement in operating ratios, but it is pointed out that this does not in any way reflect discredit on the management of the companies but simply means that the tremendous improvements in fuel economy and efficiency of all classes of plant transmission and distribution equipment has been practically offset by the unavoidable increases over the period as a whole in the unit prices of fuel, wages for labor, and in the large rate reductions in the products sold by the companies.

The trend in the ratio of funded debt to total capitalization, as shown on another chart, has been downward, although not so much so as might be supposed from the amount of attention the subject has attracted. Likewise, we learn that the modern trend in financing utilities has been toward a higher percentage of capital stock, preferably common, to total capitalization, and a correspondingly lower percentage of funded debt, which in turn has been made possible by the steadily increasing soundness of public utility business.

Another group of charts show the ratio of operating revenue to units of gas and electricity sold, operating revenue per customer, kilowatt hours sold per customer, and thousand cubic feet of gas sold per consumer. For the group of companies as a whole and including all classes of electric service combined, the revenue per kilowatt hour is shown to have decreased through the period, with the exception of from 1918 to 1921 inclusive, or during the latter part of the war period and the years of post-war price inflation and deflation, when the trend was upward. On the other hand, the revenue per thousand cubic feet of gas resulting from the rate charged for the various classes of gas service combined, is shown to have increased during the period as a whole, although decreases are shown from 1911 to 1918 inclusive, increases from 1918 to 1921, and in subsequent years with the exception of 1926, decreases are in evidence.

THE second part of the book, as stated at the outset, may properly be termed a "yardstick" of construction values to be used in practice. In connection with tables and charts showing translation factors, the author says:

> "Recent decisions of the United States circuit courts, upheld in many cases by the United States Supreme Court as in the O'Fallon Case, have condemned the valuation of properties for rate-making purposes based solely or even largely upon historic costs. They have pointed out that it should not be assumed that future costs may fall to the pre-war level, but that appreciation in values must be allowed for, and that valuations must be based at least largely upon costs as of the time at which the inquiries are initiated. In other words, if the historical costs are to be given great weight, these original costs must be translated into today's cost levels.
>
> "While it may be essential to determine all the elements which the courts have outlined as necessary for consideration in determining the fair value, including the cost to reproduce the property, it would seem that a method of translating the actual historical cost into terms of today's values would be most useful, not only as eliminat-

ing many disputed assumptions, but as a valuable check or possible confirmation of estimates made upon the cost to reproduce method."

WHILE the book is not in any way what might be called light reading, the charts and tables are arranged in such a way that valuable information may be obtained at a glance—information which represents the collection and compilation of masses of figures. Mr. Handy, in his preface, says that the book has been primarily prepared for the especial use of investment bankers or members of their analytical and statistical departments interested in public utility properties, public utility engineers and accountants, public utility officials, regulatory commissions and their staffs, public utility attorneys, and generally speaking all critical investors in public utility securities. It is quite apparent that an examination of the charts, together with the conclusions and interpretations of the author, will lead to a clearer understanding and a more balanced perspective of public utility operations.

E. N.

THE YARDSTICK OF PUBLIC UTILITY OPERATIONS AND CONSTRUCTION COSTS. By William W. Handy, consulting engineer. Baltimore: The Williams & Wilkins Company. 155 pages. 1929. $10.

The Relation of Wages to Public Utility Rates

IN dealing with trade union activities in the electrical industry, one important matter must be taken into consideration, in the opinion of Charles F. Marsh, Instructor in Economics, American University, Washington, D. C.; that is the difference in the various employees with respect to their relations to the public.

Mr. Marsh says it is important to develop a "family spirit" especially on the part of those employees who have direct contact with the consuming public. This makes the companies unwilling to brook outside interference with these employees and to be opposed to their unionization. His opinion in regard to unionization is:

> "The tendency is undoubtedly in the direction of clearer differentiation between the operating 'family' of the central station employer and that type of labor which is not so closely related to the rendering of service to consumers. That is, the 'family' is steadily being narrowed to include only managerial, clerical and semi-clerical, and exclusively operating employees, such as metermen, troublemen, and substation operators, as well as those production employees who are nominally under the jurisdiction of the Engineers' and Firemen's Unions. It seems logical to believe that these types of employees will become even more predominantly nonunion in the future than they are at present. The large body of workers engaged in the construction, reconstruction, and maintenance of transmission and distribution systems, made up mostly of linemen and cable-splicers, are finding themselves more and more outside the 'family circle' and are being employed by independent contractors or by construction companies controlled by the power companies. They are steadily assuming the nature of building-tradesmen, working on a temporary job basis rather than a permanent annual basis. This is the type of workers which will become unionized to a greater extent than in the past, if the above-mentioned national understanding is consummated."

THE author believes that in the solution of wage problems the public nature of the electric business must not be overlooked. He thinks the Public Utility Commissioners will be compelled to give some attention to wage problems. Upon this phase of the wage question he says:

> "The public utility nature of the electric light and power industry, however, necessitates caution in making an analogy between the labor problems of that industry and those of the construction industry. The question immediately arises as to whether or not an alignment between the Brotherhood and central station employers which tends to increase wages is socially desirable. It seems reasonable to believe that the high wages in the building trades have been passed on to the public in the form of higher construction costs. Higher wages in the central station industry will undoubtedly be reflected in electric rates,

whether, as construction costs, they have been capitalized as a part of the investment, or whether they have been allowed as operating costs. Under these circumstances, the distribution of the income of the electric light and power industry among wage-earners, other employees, owners of capital, and consumers is certain to become a more disputed question than it has been in the past. Disputes between wage-earners and management, however, will probably be less troublesome, as any national understanding which is reached between the two parties will, of necessity, provide some type of voluntary arbitration machinery. It is impossible to generalize concerning the extent to which public opinion will demand that governmental bodies attempt to fix wages in the industry. That Public Utility Commissions will be compelled to give greater attention to the question of wages, not only of operating employees but also of construction workers, in attempting to fix rates of service which will guarantee a fair return to investors is a logical conclusion. The close relation between wages and rates of service makes it imperative that the public, as well as labor and management, have something to say about wages and the Public Utility Commissions constitute the local representatives of the public in this matter."

Mr. Marsh is of the opinion that the social importance of trade unionism in the electric light and power industry does not lie in the relationship between unionism and continuity of service but rather, in the relation of unionism to the problem of fixing rates of service which will not be oppressive to the consumer, the worker, or to the owner of capital.

TRADE UNION ACTIVITIES IN THE ELECTRIC POWER INDUSTRY. By Charles F. Marsh. *The Journal of Land & Public Utility Economics*, Vol. 5, No. 4, p. 363.

The Resurrection of America's Water Transport

ONE of the most conspicuous features of American business during recent years has been the growth of water transportation, especially in the case of foreign trade, coastwise trade, and river traffic.

This statement is made in the 1929 Commerce Yearbook, which summarizes the results of water transportation as follows:

"The volume of water-borne traffic of the United States, foreign and domestic, in 1927, the latest available figure, was about 532,500,000 short tons. Both foreign and domestic water traffic have increased markedly in recent years, especially coastwise and river movements.

"The registered tonnage of American merchant shipping declined by about 1 per cent during the fiscal year ended June 30, 1928, but remained more than twice as great as in 1914, while the tonnage documented for the foreign trade was six and one-half times larger than before the war. The world fleet of sea-going steel and iron, steam and motor vessels increased from June 30, 1927, to the same date in 1928 by 2,000,000 tons, or about 3.4 per cent. The amount of shipping under construction in the World on December 31, 1928, was 16 per cent less than a year earlier, the decrease being largely in tankers. Construction under way in the United States at the end of 1928 was only 48,000 tons, less than half as large as a year earlier. Motor ships continued to account for more than half of the new ship-building throughout the world at the end of 1928.

"The net tonnage of vessels entering United States ports was 8 per cent greater in 1928 than in 1927. American vessels represented about 39 per cent of the total entrances during both of these years as compared with 24 per cent in the period 1910–1914. Water-borne exports, according to the United States Shipping Board, amounted to 57,036,000 long tons, a little more than in 1927, while water-borne imports aggregated 45,644,000 tons, an increase of 8 per cent. Cargo traffic through the Panama Canal again set a record, amounting to 29,402,000 tons, about 1 per cent more than in 1927."

Inland canal transportation seems to be coming back a little, at least in New York state. Here is a significant passage as an illustration:

"The total movement of the New York state canals amounted to 3,089,998 tons in 1928, about 20 per cent more than in 1927 and about 167 per cent more than in 1918. Of the 1928 total, 82 per cent was carried on the Erie division."

COMMERCE YEARBOOK; Volume I. Washington, D. C.: United States Department of Commerce. 720 pages. $1.00. 1929.

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The March of Events

Alabama

Utility Must Accord Lowest Electric Rate

POWER companies in Alabama, says the Montgomery *Advertiser*, must give all users of current the lowest possible rates. Under new rules and regulations which have been proposed by the Commission, the burden would be placed upon the companies to find the most beneficial schedule for the various customers.

A revision of rules and regulations governing the operation of telephone, gas, electric, and water utilities has been proposed and the companies were given an opportunity to present objections or amendments on January 6th. The Commission says in regard to the proposal to place the burden of giving the consumer the lowest rate upon the company:

"In order to meet any changed conditions of customers' service it shall be the duty of the utility to examine each customer's account at least once per year to determine whether the customer is being served under the most advantageous rate available for his class of service, and in the event it is found that it would be to his advantage to change to another rate, it shall be the duty of the utility to change the customer to the lower rate and to notify customer of change and continue to bill customer on lower rate unless notified by customer that he does not wish to be changed."

Another proposal is that all current generated in the state and sold in other states shall be accurately metered and recorded. Where a company operates in Alabama as well as other states it would be required to keep its investment, revenue, and expense accounts for its property within the state separately from those of its property in other states.

The regulations proposed for telephone companies provide that when a subscriber's instrument is out of order in excess of forty-eight consecutive hours the company shall refund to the subscriber the prorated part of that month's rental for the period for which the telephone was out of order. The *Advertiser* says in regard to these regulations:

"The telephone regulations further provide for adequate plants, operators, and equipment and that the operators shall at all times be courteous.

"Regarding rural telephone service it is provided that not more than ten subscribers shall be connected on any line having a length of 5 miles or less. On rural lines of greater length this number may be increased to twelve. In no case shall the number of subscribers on any one line exceed these limits for a greater period than six months, except upon special approval of the Commission.

"All circuits now serving a greater number of subscribers than permitted by this standard shall be changed to conform with these requirements immediately, the rules provide.

"The telephone company is required to give five days' notice before discontinuing the service of any regular subscriber who fails to pay the monthly bill. If the service is then discontinued it may be restored by the customer paying the bill and a $1 fee to cover cost of discontinuing the service."

Who Killed Cock Robin?

COCK ROBIN, in the guise of electric rates for Mobile's "white way" which were thought to be too high, was killed, or at least grievously wounded when the Alabama Power Company made a reduction to the city. Then arose the question "who killed Cock Robin?" To quote from the Mobile *Register* in reference to a meeting of the city commission on December 24th, following the reduction:

"Mayor Hartwell read a statement in which he said the rates offered for the new street illumination system represented a reduction of about 30 per cent from the rates which have been charged by the power company heretofore for serving the St. Joseph street white way.

"He held the view that the reduction in the power company rates was a result of the persistent movement he has sponsored for the municipal power plant to serve the waterworks, streets, and other municipal purposes. His colleagues, Commissioners Bates and Schwarz, disagreed by attributing it to the general fight which the city commission had backed for lower electric rates in Mobile.

"Commissioners Schwarz said he considered the reduction as being due to the united

efforts of the city commission to obtain cheaper rates and took occasion to repeat his opposition to constructing a city-owned plant at this time.

"Commissioner Bates said he was amused that the mayor should seem to take all the credit for the reduction for himself in view of an active rate fight which the commission has conducted for two years. He said he felt there was enough credit to be shared by all members of the commission.

"Mayor Hartwell told the commission it was not his purpose to claim any credit to which he was not entitled. He insisted that the reduction in rates offered for the new white way was not prescribed by the Public Service Commission, before which the city of Mobile has made its fight for lower rates, but came as a voluntary act of the power company itself, and he declared he thought it was done largely to discourage the building of a municipal plant."

California

Rehearing Asked in Los Angeles Fare Case

An appeal has been made to the United States Supreme Court by the city of Los Angeles and the State Railroad Commission for a rehearing of the Los Angeles railway fare case, in which the court had upheld a street car fare increase from 5 to 7 cents. The 5-cent fare had been fixed in the street car company's franchise.

A joint petition for rehearing filed on December 22nd alleges the court erred in its decision on three grounds:

1. In holding that the city did not have power to prescribe franchise rates.

2. In not holding that the franchise rates would be binding to the railway company if the California law was silent on the subject.

3. In holding that the State Railway Commission had assumed jurisdiction over fares in 1921 and 1928.

The petitioners, according to a report in the Los Angeles *Herald*, assert that the court's decision is unsound and at direct variance with many decisions of the Supreme Court and other courts referred to in the brief of the appellant. The Home Telephone Case, which was relied upon in the court's majority opinion, is declared to be inapplicable to the fare case. In that case it was held that a city did not have a continuing power to regulate telephone rates by prescribing rates in a charter.

Objection to a rehearing was thereafter filed by the Los Angeles Railway Corporation, which asserted that the petition for rehearing presented no point or argument which was not before the court on the original submission.

State Supreme Court Asked to Set Aside Phone Rate Order

The city of Oakland, on December 23rd, requested the state supreme court to set aside and annul the ruling of the Commission increasing telephone rates of the Pacific Telephone & Telegraph Company. The increases amounted to approximately $2,100,000.

The allegation is made that the order was arbitrary and not supported by evidence. Other grounds on which a review is asked, according to a report in the San Francisco *Examiner*, are:

"The Commission failed to make any deduction on account of accrued depreciation in property of the P. T. & T. in fixing a rate base. Evidence of all parties at the hearing showed that this property had depreciated substantially.

"The Commission failed to credit the depreciation reserve fund with the full income from investment made from the reserve fund.

"The Commission was inconsistent in allowing only 6 per cent on the depreciation reserve fund. The fund should be credited with 7 per cent."

Officials of the Commission are quoted in the *Examiner* as stating that in fixing the new schedule of rates the Commission went by its engineers' estimate which they have always found to be surprisingly accurate and, according to this authority, had the California Commission used the same set-up as was used in the New York telephone case which was reviewed by the Federal district court, rates would have been increased $2,700,000.

San Francisco Faces Fare and Franchise Questions

A NEW board of supervisors which went into office on January 6th were faced with the problem of settling questions relating to the Market Street Railway and fares on the municipal railway. The high points of the problem as explained in the San Francisco *Chronicle* are:

"1. Franchises of the Market street company are expiring and the majority of the key lines will cease to have legal right to exist by the end of the year.

"2. Yet the car service must continue. The supervisors recognize this, as was shown when the board failed to take any action on the franchises of the California Street Cable Railway, which expired last year.

"3. Municipal ownership advocates want the city to buy the two lines and unify the service through the city.

"4. But City Engineer O'Shaughnessy declares that 'even if the Market street lines were presented as a gift to the city, the city cannot operate them on the standard of the municipal lines without an increase in fares or tax subsidy.'

"5. O'Shaughnessy recently declared the municipal lines were operating at a loss, running behind $88,000 in the last fiscal year.

"6. Supervisors are fearful of the problem presented by the alternative of a fare increase to 7 cents or a 27-cent increase in tax rate.

"Two recent conferences between city officials and supervisors on one side and officials of the Market Street Company on the other 'got nowhere' when efforts by the city were made to find out what the company proposes to do. O'Shaughnessy says the lines are worth $17,500,000. The company declares it will take a figure somewhere between the cost of reproduction new, estimated at $45,000,000, and the cost less depreciation, estimated at $28,000,000."

The San Francisco Transportation League has challenged public officials on the matter of increasing street car fares. The head of the league, according to the San Francisco *Examiner*, has declared that $12,000,000 is the outside price which should be paid for the properties of the Market Street Railway and that if this price is paid there is no need of increasing street car fares above 5 cents. He also directed attention to the survey of the Railroad Commission showing that increased fares do not always result in increased revenues.

Colorado

Higher Street Car Fare Held Better than Busses

THE Denver Tramway Corporation has been petitioned by 626 street car users to continue the operation of street cars to Fairmount cemetery instead of substituting a bus line, says the Denver *Post*. The account continues:

"The petition states that the signers are in favor of the increased carfare proposed by the company, but that they want route No. 15, or the Fairmount street car line, left as it is.

"'We do most sincerely wish and respectfully pray,' the petition states, 'that the said route No. 15 or Fairmount street car line, be not now nor in the future relocated, dismantled, abandoned, nor the tracks taken up; and that the Denver Tramway Corporation continue the operation of its street car service to, through, and from this section as now conducted.

"'Further that it is our several opinions that the continued street car operation has helped materially to develop this section; that in numerous instances property values have been established and maintained because of said service and present location of tracks.'"

Maryland

Depreciation to Be Based on Value

THE Baltimore 10-cent fare case will now go back to the state after a decision by the United States Supreme Court on January 6th upholding the right of the company to a return of 7½ to 8 per cent instead of the 6.26 per cent allowed by the Commission. The court held that an injunction should have been issued against the Commission order on the ground that the fares fixed therein were confiscatory.

A very important ruling of the Court will have to be taken into consideration when the rates are again reviewed in the state tribunals. Mr. Justice Sutherland of the Supreme Court said in regard to the allowance for annual depreciation:

"The amount set aside periodically for this purpose is the so-called depreciation allowance. Manifestly, this allowance cannot be limited by the original cost, because, if values have advanced, the allowance is not sufficient to maintain the level of efficiency. The utility 'is entitled to see that from the earnings the value of the property invested is kept unimpaired, so that at the end of any given term of years the original investment remains as it was at the beginning.' Knoxville *v.* Water Co. 212 U. S. 1, 13-14.

"This naturally calls for expenditures equal to the cost of the worn out equipment at the time of replacement; and this, for all practical purposes, means present value. It is the settled rule of this court that the rate base is present value, and it would be wholly illogical to adopt a different rule for depreciation."

Massachusetts

Registration of Holding Companies Suggested

CHAIRMAN Henry C. Attwill, of the Commission, in testifying before the special commission investigating the so-called power trust on December 20th, advocated legislation forcing public utility holding companies to register with the state under the Blue Sky law, thereby forcing them to report to the Public Utilities Commission. The Springfield *Union* says in regard to the testimony of Chairman Attwill:

"The chairman recalled a provision of the law relating to the sale of securities of holding companies which provides that a corporation subject to regulation of the Department is exempt from the provisions of the act. He pointed out that many of these holding companies issue their stock without par and added that when such is the case the par is determined as the average price at which all the stock is sold.

"Such, he continued, is hard to ascertain. He next pointed out that some of the companies get listed on the stock exchange and thereby become exempt. He held that it might be desirable to remove both the exemptions so that they would be forced to register under the Blue Sky law and consequently would be required to make returns to the Department. Attwill announced his willingness to confer with Attorney Hill as to the details of such a recommendation.

"The attention of Mr. Attwill was called to the provisions of the existing law relating to municipal ownership of lighting plants whereby the community entering into the business must take over all the property of the private plants taken. Mr. Attwill felt that this statute should be changed so that the municipality should not be required to take over property for which it would have no use with proper provision being made for compensation to the company.

"In regard to the cost of such takings, Mr. Attwill felt that the Utilities Department, rather than any other department, should have the right to approve the price. As such a transfer actually would work out, the community, the speaker felt, would be willing and would pay what the plant was worth.

"Questioned by Attorney Arthur D. Hill as to the necessity of giving further regulatory powers to the Utilities Department over holding companies, he was disinclined to have his department given broad power of regulation."

Chairman Attwill explained that if the state attempted to regulate holding companies, the investors of the state would hold the state department which was doing the regulating as somewhat responsible for the conduct of the companies.

"Because some monster has grown up—if it has—there is no reason why we should take it into our household," he continued. "Destroy the monster if it is necessary to destroy it."

In reply to questioning as to whether he would favor legislation looking to the breaking up of the systems under which groups of the companies are under the control of holding companies or whether he would try to prevent a future consolidation, Mr. Attwill said:

"I hardly think that we will be entirely gobbled up in this state. We are certainly not all gobbled up at the present time. I would not advocate, however, any more holding companies without someone's permission."

Bill to Control Contracts for Gas

A BILL filed on December 31st with the clerk of the House of Representatives would subject to the control and regulation of the State Department of Public Utilities contracts entered into by gas companies or gas and electric companies for the purchase of gas. The law, if enacted, would provide that no company of this sort shall enter into a contract for the purchase of a supply without the approval of the Department after a review and determination at a public hearing of the price to be hereafter paid under the contract and furthermore the contract shall contain a provision subjecting the price to be paid for gas thereunder to review and determination by the Department.

Further provision is made that the price to be paid for the gas under such contracts shall yield the seller not more than a reasonable return on the investment required in the production and sale of such gas, but that the price shall be less than what it would cost the purchaser to produce in modern gas works of standard type of its own. The Department is granted plenary powers to determine the reasonable price of purchased gas.

Minnesota

Negotiations Begun for New Gas Franchise

THE first step in renewing plans for a new franchise and schedule of rates to replace the 20-year contract of the Minneapolis Gas Light Company which expires February 24th, was taken on December 24th when the Minneapolis Council voted to employ Dr. Milo R. Maltbie to assist the city in its negotiations. A deadlock over the question of employing an expert threatened to hold up the matter but a vote of 16 to 10 finally decided the question in favor of Dr. Maltbie. Some of the aldermen had desired to leave the negotiations to City Engineer N. W. Elsberg. Others advocated the retention of Dr. Edward W. Bemis of Chicago.

The gas company has submitted a printed proposal for a new franchise and schedule of rates. An agreement was sought by the company in order that the company could make arrangements for refinancing $6,828,000 of bonds and notes which will be due February 1st. The company also has planned improvements totaling $1,488,000 which will require financing, it is reported in the papers.

The schedule submitted by the company provides for step-rates including a $1 minimum charge which would cover 200 cubic feet of gas. Thereafter the rate would be 82 cents per thousand for the next 2,800 feet; 74 cents per thousand for the next 4,700 feet; and 72 cents per thousand for the next 150,000 feet.

"The experimental year under this schedule will cost many of the consumers more than they are now paying," John K. Swanson, vice president and general manager of the company, is quoted as saying, "but it will not penalize anyone and will no more than compensate in a small degree for the low rate which that customer has been enjoying in the past. If the new rate induces very much larger consumption, the yield will be greater then will be required by the company, and the rates can be reduced. If such increased consumption is not induced, and, on the other hand, a large number of consumers are driven off the line, the return probably will not be as great as the company will require, and the rates must then be increased. Experience alone can solve the problem."

Missouri

Utility Wants Lower Valuation

THE novelty of a Missouri public utility's appearing in a rate case and attempting to minimize the valuation of its property, says the St. Louis *Post-Dispatch*, was presented on December 13th at a hearing conducted by Chairman Stahl of the Missouri Public Service Commission in the case of the Missouri General Utilities Company's application for permission to reduce rates to consumers of electricity in the city of Salem.

"The additional novelty of a city's opposing a reduction in rates also was presented," the *Post-Dispatch* continues. "It was the first time the Missouri Commission ever had that sort of a problem before it. The case grew out of the installation of a municipal electric plant by the city and an effort of the privately-owned company to reduce its rates in an

attempt to prevent the municipal plant from obtaining enough business to meet its operating costs and obligations."

A complete reversal of position was witnessed, since two years ago the company presented a valuation in opposition to a petition by the city for a decrease in rates, while at that time the city sharply questioned the valuation.

About a year ago the franchise of the company expired but the concern has continued in operation. The municipal plant began business on October 24th and the city council ordered the private company to remove its property from the streets. A claim of discrimination by the private company was not made out since the company showed that it had reduced rates in other places as well as in Salem, and, therefore, there was no special rate cut for that city.

Car-men's Wage Dispute Settled by Commission

THE State Public Service Commission, on December 16th, settled several points in controversy between the St. Louis Public Service Company and Local Division 788, Amalgamated Association of Street and Electric Railway Employees of America. These points have been disputed since a wage arbitration award made by the Commission on May 20, 1929.

One of the points was overtime pay of motormen and conductors. The unions contended that under the award platform men should have time and one-half for overtime. The Commission holds that these men should receive the regular rate of hourly pay for overtime when delayed beyond schedule time of their runs by accidents or blockades. The view is that the completion of a regular run can only be consummated by placing the car in the barn.

The wages of trolley men and switchmen on cars other than passenger cars were increased 4 cents per hour by the award. Some of the employees of other departments act in such capacity only infrequently and have only received 3 cents per hour increase. The Commission has ruled that these men when acting as trolley men should receive 48 cents per hour but that upon return to their regular duties they shall receive the pay of their classification.

On the question of classification of men employed in the bus department the Commission held that the company had not violated the award. A few men had not received an increase allowed to others.

Bus and Trolley Operations Co-ordinated

THE recent sale of the People's Motorbus Company to the controlling interests in the street railways operating in St. Louis is expected to eliminate wasteful duplication. According to Albert T. Perkins, vice president of the City Utilities Company and a director of the Public Service Company, there will be no immediate change in operation of the busses, but as soon as possible the two services will be co-ordinated, which undoubtedly would mean interchange of transfers and a uniform rate of fare on the lines.

"I think it is a step in the right direction," was the comment of City Counselor Muench as reported in the St. Louis *Post-Dispatch*. "They will now be able to co-ordinate street car and bus service which should be a benefit to the car rider.

"The street car company's mistake was in not acquiring the bus company before, or establishing bus lines of its own, which would have made the bus company unnecessary. This could have been done at considerably less cost to the company. The competition of the bus company has made it very difficult for either company to make any money."

New Jersey

Attempt to Block Higher Fares Unsuccessful

FINAL hopes of municipalities opposing the new fares of the Public Service Company were defeated when, on December 31st, Chancellor Walker refused an injunction against the company. Action to block the fare increase had previously met with failure before Supreme Court Justice Kalisch.

The new fare schedule provides for a 10-cent cash rate and 5-cent rides for those who buy tokens. At least thirty-two independent

bus operators on six important routes, according to a report in the Newark *Call*, have filed applications with the Commission for the same fare schedules as the traction company. Other bus lines, we are informed, have not raised their fares.

New York

Financial Inquiry Follows Receivership

AN investigation by the Commission into the financial affairs of the United Traction Company, the New York State Railways, and the Schenectady Railway Company, all of which are controlled by the Associated Gas & Electric Company, has been started to ascertain whether there has been any violation of the Public Service Commission law in the financial structure of the concerns. This followed the appointment of receivers for these lines by the Federal court.

No statement or disclosure, says the Albany *Times-Union*, was made as to whether recent acts of opposition to the Associated Gas & Electric Company by a bondholders' committee has caused the investigation. The inquiry, it is stated at the Commission offices, is for the purpose of determining the ownership of capital stock of the company, to determine whether any assignment or transfer of capital stock has been made in violation of the provisions of the Public Service Commission law, and to determine whether any of the companies has made or recorded any transfer or assignment of capital stock in violation of that law.

The United Traction Company operates in Albany, Troy, and Cohoes; the Schenectady Railway Company in that city, with lines running to Albany, Troy, and Saratoga Springs; and the New York State Railways in Rochester, Utica, and Syracuse.

Committees have been formed to protect the holders of certain bonds which are to become due in the near future, and upon which default in interest has been made. There is a dispute as to the extent of property covered by the mortgages back of these bonds.

Inquiry into Power Rates on Long Island

PETITIONS alleging that the profits over a course of years by the Long Island Lighting Company and the Queensborough Gas & Electric Company were excessive and that the charges now being made by the companies for electricity are wholly unreasonable have been filed with the Commission. A demand is made that the Commission authorize an immediate investigation of the business and operations of the company, that the Commission hold public hearings, and that rates be sharply revised downward.

A complaint was originally filed for the same purpose in 1927, containing a few signatures in excess of the 25 signatures required by the Public Service Commission law. Thereafter, when several of the signers withdrew their signatures, the complaint was returned and the matter dropped. Increases in more recent earnings are alleged.

Ohio

Logan Gas Case Goes Back to Commission

BY a decision rendered in the supreme court on December 24th, the Logan Gas Company rate case is affirmed, with modifications, and sent back to the Commission for further hearings. The court modified the Commission's order in regard to the valuation of gas producing acreage.

A valuation of $7,880 was allowed by the Commission where the company claimed $1,870,000. The figure allowed by the Commission represented the actual cost to the company of acquiring the leases, while the court held that the property must be valued as used and useful in the conduct of the company's business.

The total figure fixed by the Commission as the rate base was $10,845,890.80 as compared with the company's claim of $22,227,208.78.

New rate schedules were filed by the gas company on February 7, 1925, providing for an increase of 73 cents on the first 5,000 cubic

feet of gas consumed. It originally affected 56 municipalities and villages. Several of the cities protested the increase and the Commission suspended the rates for three months while it conducted an investigation. This involved an appraisal of the property and continued from time to time from May 5, 1925, to April 27, 1928, when a final decision was made. During the investigation 40 municipalities came to agreement with the company as to rates, and ordinances were passed accordingly, thus eliminating those cities from the rate proceedings. The others will now press their claims before the Commissions.

Pennsylvania

Payment Terms Adjusted Pending Final Decision

An agreement was entered into on December 17th between the Scranton-Spring Brook Water Service Company and representatives of ratepayers for the payment of bills pending a final decision by the Commission on the question of rates. This was expected to relieve the tension created by the demand of the company for rates temporarily authorized by the Commission. In a statement by the company, as quoted in the newspapers, it is said:

"Each consumer may determine for himself which method of payment he wishes to follow and the company will be guided in each case by the expressed desire of the individual consumer. Heretofore the Scranton district customers have elected to pay on the basis of the new rates as have also a large number of customers in the Wilkes-Barre area. By this action these customers have avoided all deferred payment charges and furthermore have relieved themselves of any worry concerning back payments which will be due in the event that the Public Service Commission decides that the company is entitled to the rates now in effect, or to other rates which are in excess of the rates in force prior to July 1, 1928. In other words, the customers who have paid their bills in full have deposited money which will meet their obligations if the rates are sustained, or which will be returned to them if ordered by the Public Service Commission.

"Should any of the Scranton district consumers wish to avail themselves of the partial payment feature of the above agreement and will so notify us, we will accept payments on account from such consumers on the basis of the old rates. Under this plan collection of the difference between the amount due and the amount due under the new rates will be deferred as outlined in the agreement but will be subject to a penalty of 10 per cent."

Rhode Island

Agreement on Power Supply May Bring Lower Rates

The way for a reduction in the cost of electricity to the average consumer during the coming year, reports the Newport *Herald*, is believed to have been paved by the filing of new power rates between the Rhode Island Power Transmission Company and the Narragansett Electric Company with the State Public Utilities Commission on December 26th.

William C. Bell, vice president of the New England Power Association and the Narragansett Electric Company, is reported as saying that he could not state specifically when rates would be reduced, but he emphasized the fact that new reductions could be expected as a result of the agreement. The contract disclosed that the Rhode Island Power Transmission Company has assumed the contractual rights and obligations of the Atlantic Power Company and agreed to sell the Narragansett company its surplus power at a lower price than the Narragansett can generate its own power. The rate is said to be one-quarter of a mill per kilowatt hour less than the cost of a kilowatt hour to the Narragansett company to make such power on its own system.

The Narragansett company in return, we are informed, has agreed to sell to the power transmission company at two rates. One rate is a quarter of a mill, plus the cost of making the power. The other is to furnish power to the transmission company by the Narragansett company at cost to the latter company, plus a service charge that will equal the cost of taxes, insurance, depreciation, obsolescence, and interest on the plant and equipment of the Narragansett company.

WHAT READERS ASK

Out of the mail bag of the Editor have come these questions; because they touch upon subjects of broad interest to those in the public utilities field, they have been selected for publication—together with the answers. What questions do *you* want to ask?

QUESTION

It is my understanding that the state of Massachusetts bases rates upon cost, and it has occurred to me that possibly a number of other states may be following this practice. What is the rule?

ANSWER

You are evidently referring to the question whether the rate base is calculated on the prudent investment or the present value theory.

Some of the states have favored cost as the basis of rates, while others have favored reproduction cost; that is, the cost of replacement at the present time. Neither of these theories has been approved completely by the United States Supreme Court. That body has consistently held that rates must be based upon the fair value of the property, and that in determining the fair value, present prices (or reproduction cost), original cost, and other factors must be considered. The Court has reversed valuations based upon original cost without a proper consideration of present prices, while, on the other hand, it has never stated that the present reproduction cost is the exact measure of present value.

The state of Massachusetts has favored prudent investment and is opposed to present value as the basis for calculating the return. The state of California has largely favored original cost or prudent investment as the basis of rate making. Some of the Commissions which formerly considered prudent investment as the proper basis for return have modified their views in accordance with the opinions of the Supreme Court.

For decisions in which investment has been favored as the basis of return, or as the chief element to be considered in determining value, we refer you to: *Re* Napa Valley Electric Co. (Cal.) P.U.R.1925A, 724; *Re* Fresno Traction Co. (Cal.) P.U.R.1925C, 566; *Re* Cripple Creek Water Co. (Colo.) P.U.R.1916C, 788; *Re* Chicago, N. S. & M. R. Co. (Ill.) P.U.R.1918A, 388; *Re* Indiana General Service Co. (Ind.) P.U.R.1920A, 489; *Re* Central Union Teleph. Co. (Ind.) P.U.R.1920B, 813; *Re* LaPorte Gas & E. Co. (Ind.) P.U.R.1921A, 824, 826; *Re* Missouri & Kansas Teleph. Co. (Kan.) P.U.R.1918C, 777; *Re* Shreveport Railways Co. (La.) P.U.R.1929A, 88; Butler *v.* Lewiston, Augusta & W. Street Railway (Me.) P.U.R. 1916D, 25; Murchie *v.* St. Croix Gas Light Co. (Me.) P.U.R.1917D, 202; *Re* York County Water Co. (Me.) P.U.R.1921A, 439; *Re* Bay State Rate Case (Mass.) P.U.R. 1916F, 222; Customers *v.* Worcester Electric Light Co. (Mass.) P.U.R.1927C, 705; *Re* Platte County Independent Teleph. Co. (Neb.) P.U.R.1922D, 303; Patterson *v.* Hughes Electric Co. (N. D.) P.U.R.1921A, 1; *Re* Douglas County Light & Water Co. (Or.) P.U.R.1920E, 667; *Re* Molalla Electric Co. (Or.) P.U.R.1922C, 810; *Re* Tutwiler (Tenn.) P.U.R.1920C, 277; Huntington *v.* Public Service Commission, 101 W. Va. 378, P.U.R.1926D, 835; Bluefield *v.* Bluefield Waterworks & Improv. Co. (W. Va.) P.U.R. 1917E, 22 (Reversed by U. S. Supreme Court).

It seems that at the present time the Commissions generally hold that reproduction cost, original cost, and other values must all be taken into consideration, and a reasonable judgment as to present fair value shall be based upon these elements. Massachusetts is an exception and a recent case in Louisiana, cited above, indicates an exception there. In California, there has been opposition to the consideration of reproduction cost, and the Commission has advanced the theory that while in a court proceeding to determine whether there is confiscation, other factors than original cost may be demanded by the court, still the Commission, in determining what rates are just and reasonable and what rate base is economically sound, may rely largely upon original cost.

The citation of cases recognizing the principle that all of these elements must be considered are too numerous to include here,

but will be found at length in the Digest of Public Utilities Reports. A few of the leading cases from various states are:

Re Guilford-Chester Water Co. (Conn.) P.U.R.1928C, 545; Boise Artesian Water Co. *v.* Public Utilities Commission, 40 Idaho, 690, P.U.R.1926A, 195; *Re* Logansport Home Teleph. Co. (Ind.) P.U.R.1928E, 714; *Re* Northern Indiana Teleph. Co. (Ind.) P.U.R. 1929A, 74; *Re* Capital City Water Co. (Mo.) P.U.R.1928C, 436; University City *v.* West St. Louis Water & Light Co. (Mo.) P.U.R. 1928D, 322; *Re* Omaha & C. B. R. & Bridge Co. (Neb.) P.U.R.1928A, 689; *Re* New England Teleph. & Teleg. Co. (N. H.) P.U.R. 1926E, 186; *Re* Elizabethtown Water Co. (N. J.) P.U.R.1927E, 39; *Re* New York Teleph. Co. (N. Y.) P.U.R.1926E, 1; *Re* United Traction Co. (N. Y.) P.U.R.1927D, 637; *Re* Mandan Electric Co. (N. D.) P.U.R. 1925D, 508; Oklahoma Nat. Gas Co. *v.* Oklahoma Corp. Commission, 90 Okla. 84, P.U.R. 1924A, 132; Public Utilities Commission *v.* Narragansett Electric Lighting Co. (R. I.) P.U.R.1925D, 545; *Re* Nashville R. & Light Co. (Tenn.) P.U.R.1929A, 664; Municipal Gas Co. *v.* Sherman (Tex.) P.U.R.1925E, 67; *Re* Chesapeake & P. Teleph. Co. (Va.) P.U.R.1926E, 481; *Re* Bluefield Water Works & Improv. Co. (W. Va.) P.U.R.1927B, 275; *Re* Clarksburg Light & Heat Co. (W. Va.) P.U.R.1928B, 290; Manitowoc *v.* Wisconsin Fuel & Light Co. (Wis.) P.U.R.1927D, 737.

The North Dakota statute provides that the Commission shall determine the original cost of land, the value of land by comparison, the value of additional land used for right of way, the cost of new production of all physical property other than land, depreciation, the net value of all physical property other than land to be derived from new reproductive cost; and that the valuation shall be such sum as represents as nearly as can be ascertained the money honestly and truthfully invested in the property.

The North Dakota Commission in Logan *v.* Bismarck Water Supply Co. (N. D.) P.U.R.1923B, 450, after discussing the various court decisions, held that original cost could not be accepted as the basis of return, but that the Commission had power to consider every element or factor ascertainable which tended to shed light upon the question of the property's value, and that the Commission was not confined to any particular method nor to any theory of valuation.

An inspection of these decisions reveals the fact that during the earlier years many Commissions leaned towards original cost, but after the pronouncements of the Federal Courts, including the United States Supreme Court, they have modified their methods of valuation, as in the case of the North Dakota Commission, and have given more consideration to present prices. In some cases it has been stated that the present reproduction cost is the dominant element in determining present fair value.

Question

Can a telephone subscriber attach to his telephone line a cradle type of telephone, particularly when the telephone is not up to the standard and interferes with the service given any one using the phone or talking to a person using the phone? The rules and regulations provide that: "A subscriber shall not permit a telephone in his premises to be moved or in any way changed. . . ." The rule also provides: "No stations or other equipment not furnished by the telephone company can be connected with any service furnished by the telephone company and the stations are not at any time to connect with any land other than the land of this company."

Answer

We are unable to cite any cases in which this specific question has been decided, but it seems to be the general practice of telephone companies to reserve the right to disconnect all foreign attachments of this sort; and rules and regulations similar to those mentioned are generally approved.

There are many cases in which the general proposition is stated that all instruments should be owned by the telephone company. This question, of course, usually arises where the duty of the company to own instruments is the point involved; but there is also involved the basic fact that satisfactory service is desired on the whole system regardless of the view of a single subscriber as to the type of equipment which he desires. In *Re* Lafayette Teleph. Co. (Ind.) P.U.R.1915A, 930, the rule of a telephone company that telephone instruments were not to be connected with any apparatus not furnished by such company was approved.

The Problems of Regulating Interconnecting Companies

The first of a series of articles on this timely subject—which is becoming of greater importance as the utility companies extend their activities over state lines—will appear in the coming issue of this magazine.

The Utilities and the Public

Prohibition Seeks the Aid of the Meter Man

THE following small but interesting news item appeared in the Washington *News* not long ago:

"DRY AGENTS WANT GAS COMPANIES TO HELP.

"San Francisco—Heartened by success in securing government subpœnas for information on confidential telephone numbers and addresses, prohibition officials today sought to gain co-operation of the Pacific Gas & Electric Company, claiming that in a majority of cases sudden jumps in gas consumption meant sudden starts of liquor still operations."

This is a matter that should set utility managers to thinking. Some months ago the executor of a New England gas company announced that he was contemplating giving instructions to the meter readers of his company to report any and all liquor law violations that came to their attention in the course of their work.

It is a serious question of public relations that must be settled by the judgment of the management of each operating utility. Policy in this direction necessarily will be tempered by the sentiment in the community affected and other local factors. It is not difficult to imagine the unearned and undeserved unpopularity that would come to a utility in a community where there is strong "wet" sentiment if its meter readers made a habit of telling the district attorney all they saw, and if you don't think a meter reader sees a great deal, ask any meter reader.

With this in mind it should be of some interest to discuss the legal rights of a utility's management in this regard. First of all, is the policy of the management respecting the reporting of law violations by employees discretionary? Is the utility under any obligation to accord co-operation with prohibition officials?

Co-operation with duly constituted authority is, theoretically at least, not a patriotic virtue but a downright duty of citizenship. Sometimes this duty can be enforced by law—sometimes it is simply up to the conscience of the individual. To apply this principle concretely let us suppose that a district prohibition official is anxious to have meter readers report violations to him. Naturally enough, these utility employees are apt to be hesitant about telling matters if they thought by doing so they would become *personae non gratae* with their employer. So, the prohibition official, realizing that co-operation of the management is necessary, asks the company to issue an appropriate order to the meter readers and to threaten to discharge employees who are known to have failed to report law violations. Can the utility management refuse?

After examining the available legal authorities on the point, it would seem that a utility manager is under no legal obligation to direct its employees to do such a thing. The only possible means of forcing the com-

pany would be by way of injunction and injunction does not lie to compel one person, corporate or otherwise, to order another person to do something which the latter (in this case the meter reader) could be made to do by legal means. This implies that the meter reader *could* be compelled to furnish the information desired. This is true. The meter man must answer a subpoena to testify but, as a practical matter, unless the meter reader goes and tells all he knows in the first place, the government would never find out enough to justify starting proceedings, and unless proceedings are commenced subpoenas cannot be issued.

Speaking strictly from a legal standpoint then, the policy of the management on this question is discretionary. To refuse co-operation with the government may, in the opinion of some, be *sabotage,* and, in the opinion of others, may be smart public relation policy. But in any event each utility has the right to decide the question for itself.

There is a more minor question on this subject that might as well be assumed here and that is whether or not the meter reader could refuse to testify on grounds that what he saw was "privileged information" coming to him in the course of his employment. There has recently been a great deal of confusion about what constitutes privileged communications which are exempt from the laws of evidence.

There are in law four situations where communications between persons are known as "privileged" and the party obtaining the information in any of these ways could not testify concerning it without the express consent of the party imparting the information. These were doctor and patient, priest and penitent, lawyer and client, and husband and wife. The reason for their exemption is purely one of public policy. If people thought that the doctors would ever use their admissions against them, they would not tell the truth or else stay away from doctors altogether which would be a bad thing for public health. So with the other professions and the domestic relations.

Not long ago a court decided that certain newspaper reporters obtaining information about liquor law violations in the course of their employment were not "privileged" in the sense that they were exempt from giving testimony. Because of their refusal to testify these journalists spent a little time in jail for contempt of court. If newspaper reporters are not privileged, *a fortiori* it will be seen that meter readers could not refuse to give evidence, once they were subpoenaed by a court on grounds of legal privilege.

No Protection for Competing Utilities in West Virginia

THE case of Huntington Brick & Tile Company *v.* United Fuel Gas Company, also known as the Huntington Gas Case has been shunted about from Commission to court and court to Commission so often

that we are led to wonder if we have heard the last of it. The controversy, which has already been mentioned twice in these pages, arose when one gas company which is selling gas considerably cheaper than another gas company in and about Huntington, West Virginia, refused the request for service of a brick company and certain other industrial consumers which were using large quantities of natural gas.

The utility said it was not obliged to serve a consumer already being served by a competitor—to wit, the other gas company. Probably the real explanation was the fact that both companies were owned by the same holding company and there was naturally more profit in serving these customers at a higher rate than at a lower one.

When the case first came before the West Virginia Commission the utility was ordered to extend service. That was proceeding Number 1. The utility appealed and the supreme court reversed the Commission and sustained the utility. That was proceeding Number 2. Later on another application was made and the Commission found that the facts were the same as in proceeding Number 1, and giving due regard to the opinion of the higher court dismissed the complaint. That was proceeding Number 3. Again there was an appeal. This time the industries appealed and again the court disagreed with the Commission's order, setting it aside and sending the case back for a decision on its merits. That was proceeding Number 4.

In its most recent decision, which is proceeding Number 5, the Commission reaffirms its original opinion and directs the cheaper company to extend service. The most important point in the decision is the holding that the mere authorization of two competing utilities in the same field is evidence of the will of the state that the utility should not be protected from each other but must meet all reasonable demands for service. This state will was said to be manifested through municipal ordinances authorizing the operation of competitive utilities where the municipalities have legislative authority to make such ordinances. In such a situation the Commission confessed its own inability to give protection to a utility's monopoly—particularly the junior utility. The opinion states:

> "The state's authority to prevent competition in utility service, in the interest of the public to be served, cannot be exercised effectually except at the time of the installation of the facilities and the inauguration of the service. In many jurisdictions that power is delegated to the state regulatory Commission, as evidenced by cases cited by counsel. Our legislature, however, has lodged exclusive power in municipal councils and county courts to grant or refuse franchises to natural gas pipe line companies, and to other utilities. That authority carries with it a sound discretion as to the public necessity and convenience to be served by one or a dozen utility concerns offering the same service. When that discretion is exercised by granting a franchise to one utility and refusing all others, the result is a complete monopoly and perfect protection from ruinous competition and economic waste, in accordance with the ultimate theory of state regulation. On the other hand, when the municipal authority which has been exclusively designated by the legis-

lature to exercise that sound discretion, does exercise it in the determination that the public interest is better served by the granting of franchises to two gas companies, as was the case in this instance, then the legislative intent as expressed by the municipal agent is not manifest to protect either utility from the competition of the other. And the development company having voluntarily sought and accepted a junior franchise, can not now be heard to complain."

Huntington Brick & Tile Co. *v.* United Fuel Gas Co. Case No. 1793.

Indiana Railway Is Compelled to Protect Its Own Monopoly

WHEN we found out that the utility business was not susceptible to the old axiom about competition being "the life of trade," when we learned that a utility's service is usually a natural economic monopoly in any given community requiring legal guardianship in order to avoid the waste and ruin of unnecessary duplication, we established the policy of protection from competition. Heretofore this policy has usually been explained as an aid which the people through their duly authorized tribunal—the Commission—extends to the utility to avoid the waste of duplication and in return for adequate service at reasonable rates. As far as we know it has usually been assumed that it was simply an offer by the state to the utility which the utility could refuse or take, depending on whether they wanted competition or protection from competition.

If a recent decision from the Indiana Commission is followed, however, we may have to overhaul our theories about protection from competition as a regulatory policy. Is the utility under any obligation to accept this protection? Can the state through its Commission push this protection on the utility whether they like it or not? When the state promises to protect the utility in any given field and the utility accepts, is there then a mutual obligation on the part of the utility to preserve the field from competition?

This seems a rather novel idea about utility monopolies and came about in this way. The Northern Indiana Power Company owns certain tracks, poles, trolley wires, and other railway accouterment in an outlying district of Kokomo in connection with its interurban service. The company also operates a local street railway system in the city proper. The inhabitants of the district asked for the extension of street railway service over the interurban track. The company refused to extend the new service claiming that the matter had not been brought before the city council and that the latter by ordinance had not ordered the company to extend the service requested.

The Commission in granting the petition pointed out that this was not an "extension of service" in the sense of being a new addition to the plant since the track, poles, etc., were already in place and were under the control of the company. If this system were not so operated, possibly bus or

other competition would be encouraged to appear. Under these circumstances could the Commission order the extension? Here is a passage quoted from the opinion of the Public Service Commission:

"That the Northern Indiana Power Company should be protected in this field from detrimental competition and should, in turn, protect the transportation field in Kokomo by rendering service to such parts of the city as need the service, provided the extension of service will not result in an undue burden upon the remainder of the transportation system.

"That petitioners herein represent a community of more than 120 families who need street car or bus service in going to and from their places of employment.

"That public transportation facilities should be made available to these petitioners by the respondent herein at least between the hours of 6:30 A. M. and 8:30 A. M., 12:30 P. M. and 2 P. M., 5 P. M. and 7 P. M.

"That respondent herein should be permitted to adopt either street car service or bus service during the hours suggested above, provided that bus service (if adopted) be operated with the same advantages, to patrons, of transfer, destination, and adequate frequency as street car service (if adopted) would afford."

Re Northern Indiana Power Co.

City Fights Move of Utility to Reduce Rates

THE millennium is here. A utility company in Missouri is insisting on what it claims is its legal right to earn not more than a fair return on its investment. In other words, it is fighting for the right to reduce its rates. Not only that but it is receiving strenuous opposition from the city in which it operates. Cities usually fight for reductions but the city of Salem is actually fighting against it. The utility is attempting to minimize its own property valuation and the Missouri Commissioners are wondering if they can believe their ears since, according to Chairman Stahl, it is the first situation of its kind in the history of the Commission.

This apparent reversal of the usual procedure can be explained, however, by the fact that sometime ago the city installed a municipal electric light plant to compete with the privately owned company. To defeat this move the utility has asked the Commission for authority to reduce its rates in order to prevent the municipal plant from getting enough business to meet operating expenses. If it is successful, it may drive the city out of the electric business, so there is apparently a method in the seeming madness of the private company. The company, in a hearing before the Commission in Salem last December, sought to show that it is now actually earning more money than is reasonable, that its receipts were high and its expenses low. The city, on the other hand, contended that the return of the private utility was not excessive and that it was not only entitled to the return it was getting but *obliged* to take it and to charge enough rates to get it.

Although this situation is quite novel, the legal principle involved is not new. Utilities are entitled to

charge rates sufficient to yield a reasonable return certainly. Furthermore it is fairly well established that they can be compelled to charge sufficient rates to produce such a return though they might want to serve for less. This is because it is in the interest of the public to protect a utility from impairing its own financial security and consequently its existence by unwarranted rate cutting.

Consequently, the question presented in the Salem controversy is whether the rates now charged by the privately owned utility are more than sufficient to produce a fair return on the value of the property. If it is proven the return is excessive on the fair value of the property involved, a reduction is in order whether the proof comes from the city or from the utility itself.

That is why the private company, to gain its point, is minimizing its own property value, and that is why the city is taking the opposite viewpoint. The fair value of the property will probably decide the case and that is a question of fact for the Missouri Commission.

Motor Passage Brokers Are Not Subject to Regulation

SOME weeks ago there appeared in a Denver, Colorado, newspaper a running advertisement reading as follows:

> "Do you wish passengers? Do you wish cheap transportation? In either case, register with us. Mutual Auto Travel Service, 425 Charles Building, Ph. Main 5521."

Shortly after these advertisements appeared, the Colorado Commission made an order for an investigation, requiring the operators of the business to show cause why the Commission should not direct them to desist from further operation.

Upon investigation it was found that these operators proposed to make it possible for some person desiring to make a trip to some certain city to ride in an automobile with some other persons who happened to be motoring to that city at the time in question. They stated positively that it was not their intention to put people desiring transportation in touch with any common carrier operating unlawfully. Of course these transportation brokers received compensation for their service in getting parties together which might be paid by either the passengers or the carrier.

The Colorado Commission, after giving this rather novel proposition its due consideration, was of the opinion that the operations were not within the scope of Commission regulation. The opinion states as follows:

> "The Motor Vehicle Act, the enforcement of which has been committed to this Commission by the legislature, simply prohibits the operation, without a certificate, of motor vehicle carriers or motor vehicle common carriers. If Brown happens to be making a pleasure or business trip from Denver to Chicago in his automobile and his neighbor Smith goes with him, paying compensation for the transportation, and Brown does not make a business of transporting passengers, it is obvious that

he does not violate the law by taking his neighbor Smith with him. If Brown is making the trip and knows of no other person to afford him companionship on the trip and to pay a part of the expense thereof, we cannot understand how an intermediate agency, such as that offered by the respondents, violates the law in putting Brown and Smith in touch with each other. If Brown were making repeated trips on which he carried passengers for hire, whether over a particular route or otherwise, he would be violating the law, and the respondents in aiding him in so doing would likewise be violating the law. But if the one doing the carrying is not, under our statute, a common carrier, one aiding him in carrying on the business, which is not that of a common carrier, cannot be violating the law."

Re Hanes, Case No. 503.

Parent Teacher Group Not a Proper Party to Start Railway Rate Case

It is a principle of law that no court has jurisdiction to decide a controversy unless the party or parties initiating the proceedings are "parties in interest." That is why one frequently hears of a "taxpayer suit" with reference to some proceeding questioning some governmental act or policy. It simply means that the only ground for the plaintiff to question the matter is his interest as a taxpayer. One who pays taxes, of course, has a legal right to question in a court of law any improper disposal of tax funds. But, on the other hand, if it is shown that tax funds are not jeopardized the suit must be dismissed no matter how improper the act might be in any event. In other words, the plaintiff has failed to "show his interest" in the subject matter of the suit.

It follows from this that no court has any authority to initiate proceedings on its own motion. To quote the words of an English jurist: "Blood may run through London's streets and evil deeds cry to heaven for vengeances and yet all the King's justices are powerless unless there be one to bring the matters properly to court."

Commissions sometimes differ from courts in two ways. First, it may take jurisdiction of the premises upon a complaint by an offended party without complainant being made a formal party to the proceedings. Secondly, it may in some states take jurisdiction on its own motion without any formal complaint whatever. This makes Commission regulation more flexible than court procedure and permits the former to investigate matters promptly without the red tape of filed pleadings.

Minnesota is apparently one of the few states where the jurisdiction of the Commission is not so broad. In 1921, a law gave the Commission power to regulate fares of street railway companies but included a provision that it could take action only upon a formal petition presented by "any street railway or city." Some weeks ago a resolution was adopted by the Parents and Teachers Association of a Minneapolis school requesting the Commission to adopt a 5-cent fare for school children.

The Commission asked an opinion of the attorney general, John F. Bonner, as to its power to take jurisdiction on such a basis. The opinion of that official was as follows:

"You submit to us a form of resolution directed to your Commission, signed by certain individuals as the legislative committee of the Parents and Teachers Association of the Morris Park School at Minneapolis, requesting 'your honorable body to use your official power to reduce the street car fare to 5 cents for school children in Minneapolis at such hours necessary to go to and from school.'

"You request this office 'for an opinion as to the authority of this Commission in the premises.'

"I assume that your inquiry is directed to your authority to institute on the basis of this resolution an investigation of the question as to whether or not you shall require the Minneapolis Street Railway Company to establish a special rate for the carrying of school children over its lines within the city of Minneapolis.

"I am of the opinion that the authority to initiate an investigation of the question as to whether or not your Commission shall require the Minneapolis Street Railway Company to establish a special rate for transporting the school children of Minneapolis over its street railway lines within that city is limited to the city of Minneapolis and the street railway company. It is my opinion that such a proceeding can be initiated before your Commission only on formal petition by either the city of Minneapolis or the street railway company.

"Prior to the enactment of chapter 278, Laws 1921 (§§ 4816–4830, Mason's Minnesota Statutes 1927), your Commission had no authority to regulate the rate of fare to be charged by a street railway company operating a system of street railway lines lying wholly within a city in this state. This act placed this power in your Commission. Therefore, the provisions of this act and these alone must be consulted to determine the extent of the power over this subject vested in your Commission and the procedure which must be followed.

. . .

"The situation presented by your inquiry and accompanying resolution suggests no change in property values or cost of service, and obviously does not come within the power vested in your Commission by this provision."

Four Standards of a Public Utility's Service

"IN *my opinion the corporations were organized to give adequate and efficient service. This is the first standard they should meet.*

"The second standard is that the rates should be as low as is consistent with good service.

"The third, that there should be progressive methods, both of operation and rate-making.

"And the fourth, that there should be publicity in all matters connected with finance and indirectly connected with returns in every way."

—DR. ARTHUR T. HADLEY

(In a recent statement before the New York Commission on Revision of Public Service Law)

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COMPRISING THE DECISIONS, ORDERS, AND RECOMMENDATIONS OF COURTS AND COMMISSIONS

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[November 4, 1929.]

APPLICATION *of a taxicab operator for authority to render additional service; denied.*

By the COMMISSION: On October 5, 1929, the City Cab Service, Incorporated, filed with the Commission its application to operate fifteen additional taxicabs under its certificate No. 3, as by application on file will fully appear.

Said application was assigned for a hearing at the office of the Commission, Room 41, State Capitol, Hartford, on October 18, 1929, of which notice was given to the applicant and to all other parties of interest, as by notice and return, on file, will fully appear, and at which time the parties appeared and were fully heard.

This application for authority to operate an additional number of taxicabs in Hartford and vicinity was heard at the same time with similar applications of existing certificate holders and new applicants for a certificate of public convenience and necessity in Hartford.

As the principal issue in all of these applications is public convenience and

necessity, it is thought desirable at this time to discuss at some length the principles involved.

[1] The early cases heard by the Commission for certificates of public convenience and necessity to operate taxicab service under the provisions of Chapter 292 of the Public Acts of 1929, were comparatively easy of adjudication, as the statute created a presumption of public convenience and necessity for the operation of all taxicabs in service on and before a certain date, to wit, January 1, 1929. In practically all cases where such service existed, the statutory presumption has been confirmed by the Commission and a certificate issued to each applicant for substantially the same number of cabs in service as were in service by each applicant on and before said date.

The statutory presumption of public convenience and necessity was construed by the Commission to apply to the person, association, or corporation operating taxicabs on and before said January 1, 1929, and limited to the number of cabs at that time registered and in service by each such person, association, or corporation.

So that, in the earlier applications, the question of public convenience and necessity was not seriously involved.

At the present time new applicants, not operating taxicabs either on or before or since said January 1, 1929, asking for a certificate, and all certificate holders asking for an increase of the number of cabs originally authorized, must show that public convenience and necessity require the operation of the additional taxicabs and service requested.

The determination of public convenience and necessity for the operation of any given amount of scheduled transportation service over a prescribed route or between fixed termini, may be arrived at with a reasonable degree of accuracy. The determination of public convenience and necessity for the number of taxicabs that should be operated within a given territory is a much more involved and difficult problem.

The operation of a taxicab is not confined to any schedule or to any street or streets, but may go whenever and wherever the patron at the time desires. The demands for taxicab service are extremely fluctuating, depending upon weather and special local conditions; it occupies a more or less competitive field, and is by its nature a more or less competitive industry.

Our state, however, in the desire to protect both the industry and the public, to conserve for actual needs our over-congested arteries of public travel, and to promote the safety and dependability of taxicab service, has assumed, through the office of this Commission, the regulation of taxicab service and the limitation of the number of taxicabs to be operated in our streets, to the convenience and necessity of public travel in taxicabs.

[2] Some communities have undertaken to determine the question of public convenience and necessity based upon the total population of the territory served, and the figure of 40 cabs for every 100,000 of population has been suggested. This may be a convenient yard stick of measurement, but it is an indisputable fact that certain cities, on account of ac-

quired riding habit, other convenient transportation facilities, social, commercial, industrial, and other local conditions and the particular topography of the city, may require more taxicab service than some other cities of equal or greater population.

Ordinarily taxicab service is not in competition with street railway or bus service, or vice versa, and yet a territory having a large net-work of street railway and motor bus routes, for a more or less mass transportation at cheap rates may decrease the demand for taxicab service; and a low flat rate for taxicab service carrying two or more passengers regularly over a given route, might develop into serious competition with street railways.

The demand in any community is necessarily fluctuating. Stormy weather and special events may largely overtax the normal requirements.

Where there are several different operators of taxicab service in a given territory, it is possible that one or two operators, on account of type of equipment, local popularity, special form of rates, or other local conditions, may at times find their equipment too limited to supply the demands made upon them, while other taxicab operators are idle at the public stand.

These are all factors which make difficult the determination of public convenience and necessity in any particular community, but the total number of authorized taxicabs in any community, available for service by any one demanding, should have an important bearing on the question of public convenience and necessity.

[3] It is not good public policy to authorize an excess of public motor service in our already congested streets and highways.

It is an immutable principle of sound and successful business that a particular service must be operated on a paying basis, in order that the public may receive the character and efficiency of service required.

[4] While the taxicab business has been considered a more or less competitive industry in which anyone desiring might engage in cut rate or other form of competition with others, the legislative enactment creating state control and regulation over the operation, and limiting service to the public convenience and necessity of the community, necessarily removes to a large extent the competitive feature, and calls for only such adequate and dependable service at reasonable rates as the community may require. The requirement of public convenience and necessity removes the industry from destructive competition and from those desiring to engage for personal reasons or profit, when the field is already supplied with sufficient taxicab service.

[5] Where certificate holders make application for an increase in number of cabs already authorized and at the same time new applicants not heretofore engaged in the taxicab business make application for a certificate of public convenience and necessity to operate taxicabs in the same territory, and it is found that public convenience and necessity require more taxicab service in the particular territory, the Commission believes, following the legislative presumption and preference for all those engaged in the business on a certain

date, that the established certificate holders, if willing and qualified, should have the preference.

[6] As to allowing a limited number of additional cabs between different already certified applicants, the Commission must exercise its best judgment and discretion, which may result in one certificate holder obtaining authority for the total necessary additions, because of type of equipment, superior competency of operators, and general character of service.

[7] Cheap rates and, therefore, a temporary large demand for service do not necessarily outweigh, in meeting the public demand, the superior equipment and safer operation made possible by slightly higher rates.

As certain elements of the public require or are satisfied with a quality of taxicab service different from what certain other elements require or are satisfied with, makes difficult the establishment of an absolute standard of service and uniformity of rates. All elements of the public, however, should receive, and under public regulation are entitled to receive, to the exclusion of all others, a reasonably safe and dependable service in type of equipment and skill and character of operators, whatever the cost or reasonable rate for such service may be.

The beneficient results of public regulation should tend to raise the standard of taxicab service, and eliminate destructive cut-rate competition which ultimately destroys the industry and deprives the public of a necessary service.

[8] "Taxicab," strictly speaking, means a metered cab, where the service is metered and paid for in strict accordance with time and distance, and represents an equitable form of rate. There has grown up, however, in the taxicab industry, the so-called flat rate system, with varying types of sedan and other motor vehicles. While it may be desirable to standardize taxicabs and taxicab service, the unmetered cab has become so numerous and the flat rate so extensive that any attempt at this time to standardize to a metered cab and service would work a hardship to a considerable portion of the industry. The Commission feels, however, that the metered cab with reasonable meter rates is the logical form of taxicab service.

[9] Counsel for the applicant in the instant case correctly states that "Chapter 292, which places the taxicabs of this state under the jurisdiction of the Public Utilities Commission, contemplated safety of operation by limiting certificates to reasonable individuals or organizations. It never contemplated the prevention of expansion." In other words, if one of several certificate holders in a community, rendering safe and satisfactory service at rates not so low as to be destructive of his and the business generally, and not so high as to be an unnecessary tax or unreasonable rate upon the patrons of the taxicab industry, should be permitted to expand his business if public demand warrants. The desire to expand, and occasional excess of business, do not of themselves make a public demand or prove convenience and necessity for more cabs.

The estimated population of the city of Hartford is 175,000, and the

estimated population of the territory naturally served by the Hartford cab industry, including West Hartford, East Hartford, Bloomfield, and Wethersfield, is from 220,000 to 230,000. There are at present 136 authorized taxicabs in Hartford, located at different private and public stands.

No information has come to the Commission, and no evidence was submitted at the hearing coming from the general public or those patronizing the cab industry, that there is a dearth of cabs or cab service in Hartford, or any public demand for an increase applicable to either one or all of the cab operators.

In the instant case the applicant is authorized to operate 35 taxicabs, and the president of the company testified that most of its service came through telephone calls; that its business warranted the operation of more cabs; that at times its present number of cabs was insufficient to take care of the demand; that the company in its system of inspection could use at least five cars with taxicab markers; and that it should have, over and above its actual needs, extra taxicabs to replace those undergoing repairs.

No evidence, however, was introduced showing that the demand for its service, as reflected by gross or net income, had increased over and above that which had obtained up to the time the statutory regulation became effective when the company of its own volition could have increased the number of its cabs.

The application was opposed by a number of taxicab operators holding certificates from this Commission to operate taxicab service, on the ground that there was a sufficient—in fact over-sufficient number of taxicabs now in operation in Hartford and there was no public convenience and necessity for an increase.

[10] Although the applicant is a duly organized corporation, most of its drivers are working on a commission basis with a direct interest or ownership in the cabs they respectively operate; but their individual right to continue operating a taxicab under the certificate issued to the applicant is dependent upon the corporate action of the company.

At the time the statute providing for the regulation of taxicabs was passed, a considerable portion of the taxicab business in Connecticut was being conducted by mutual associations and combinations operating on an unbusiness-like policy.

This condition is gradually improving and under regulation when certificate holders, whether person, association, or corporation, will be held directly responsible for the operation of all cabs authorized by the particular certificate, a safer and more satisfactory service should result. Where the owner and driver of a public service motor cab pays the certificate owner a stated fee for the privilege of operating under the certificate holder's name and taxicab markers, and a percentage of his gross income, and in some cases weekly dues in addition, such an arrangement does not tend to increase the standard and safety of operation or assure the individual owner of continued business. Unfortunately situations of this kind now exist, due to the fact that individuals engaged in the taxicab business under the corporate or trade

name of another failed to make personal application and permitted the individual operation to apply on the quota of the applicant whose name was being used. The holder and owner of the certificate is the only party directly responsible to the Commission and to whom the Commission must look for the rendition of proper service. It necessarily follows under the motor vehicle law and for the proper statutory regulation of the industry, that the certificate holder must be either the owner or lessee of the taxicab in service under his certificate. This discussion of unbusiness-like methods is not intended to apply either solely or specifically to the applicant in the instant case, but to a very general condition existing throughout the state.

The applicant in the instant case has been operating less than four months under public regulation, and from all the facts presented the Commission is unable to find that public convenience and necessity require the additional service or taxicabs requested, at this time.

[11] Strict supervision and inspection by the company is commendable, but the use of taxicabs with taxicab markers for inspection appears unusual, and does not constitute convenience and necessity for public taxicab service.

For the reasons herein stated, the application is denied.

We hereby determine and direct that notice of the foregoing finding, order, and decree be given by the secretary of this Commission by registered mail to all parties in interest as by statute provided, on or before the 15th day of November, 1929, and due return make.

WISCONSIN RAILROAD COMMISSION

Re Wisconsin Public Utility Company

[U-3852.]

Valuation — Going value — Electric utility.

1. An allowance of 10 per cent of the physical value of an electrical utility was made for going concern value, p. 121.

Valuation — Cost of financing — Electricity.

2. Cost of financing was excluded from the final value of an electrical utility for rate-making purposes, p. 121.

Valuation — Customers' contributions.

3. Contributions made by customers were deducted from the value of an electrical utility to be used for rate-making purposes, p. 121.

Valuation — Working capital — Electrical utility.

4. An allowance of $41,950 was made for working capital of an electric utility having a total rate base of $743,804, p. 121.

Return — Percentage allowed — Electric utility.

5. Rates of an electric utility yielding a return of approximately 7.8 per cent were reduced to yield a return of approximately 7 per cent, p. 121.

Accounting — Merchandising — Statutory restrictions.

6. A reported profit by an electric utility from its merchandising operations was excluded from consideration of utility revenue for rate-making purposes where a statute provided that a utility should keep separate accounts and that merchandising profits and losses should not be taken into consideration in rate making, and where also there was a lack of uniform methods of accounting in both the utility and merchandising departments, p. 121.

Discrimination — Electrical rates — Residential consumers.

7. The Commission would not approve a schedule of electric rates which, while purporting to be a reduction, actually increased 58 per cent of the bills issued to residential consumers in one section, notwithstanding the fact that some of the customers were not carrying all of the costs which should have been allocated to them, p. 124.

Return — Operating expenses — Management fees.

8. Allowance of approximately 3 per cent of the gross income of an electric utility for management fees was eliminated from the operating expenses of the utility in rate-making proceedings where there was no evidence as to the actual cost of the services rendered, p. 124.

[October 31, 1929.]

INVESTIGATION *by the Commission on its own motion into rates, rules and practices of an electric utility; rates adjusted.*

By the COMMISSION: A preliminary investigation of the electric rates in effect in the West Bend and other territory served by Wisconsin Public Utility Company having indicated that a reduction might be made, a formal investigation was instituted June 12, 1929, on motion of the Commission.

Hearing was held at Madison, Wisconsin, July 11, 1929, the appearances being:

Wisconsin Public Utility Company, by W. Kuehlthau, Manager, and Donald A. Henry, Rate and Valuation Engineer; city of West Bend, by Henry O. Regner, Mayor, and Joseph Knippel, President of Common Council; village of Saukville by E. L. Eastman, Trustee; village of Fredonia by J. P. Gilson, member of Village Board; town of Fredonia by Emil Klemp, member of Town Board; Random Lake, by W. J. Hand, Village Clerk, and John Dries, Village President.

An appraisal of the utility's property as of July 1, 1925, was made by the Commission's engineering staff both on a split inventory basis and on a 1925 price basis. The values obtained for the electric department excluding nonoperating property but including the Milwaukee River Power Company property, were as follows:

	Reproduction Cost	Reproduction Cost Less Depreciation
Split inventory basis	$538,501	$441,532
1925 price basis	596,946	500,526

Due to the low output of the hydroelectric plant the above figure of $596,946, for example, representing the present day cost new value after applying overhead should not be allowed. On the basis of kilowatt hours output and value of power the above figure would be reduced by $29,000. On the same basis the figure of $538,501 would be reduced by $16,000.

The net additions to fixed capital accounts from July 1, 1925, to April 30, 1929, may be summed up as follows:

	Cost	Cost Less Accrued Depreciation
July 1, 1925—Dec. 31, 1925	$5,684	$4,988
Year ended Dec. 31, 1926	45,528	40,749
Year ended Dec. 31, 1927	84,865	78,925
Year ended Dec. 31, 1928	66,638	64,306
Jan. 1, 1929—April 30, 1929	13,778	13,778
Total additions	$216,493	$202,746

On April 30, 1929, the utility reported work in progress, estimated to cost $64,420. From an examination of the records of completed work as at July 31, 1929, there should be added to the above additions to fixed capital about $18,045.

The utility submitted an appraisal of its electric plant and property made by Spooner & Merrill as at July 1, 1925, which is summed up below, together with the additions and allowances for working capital, materials and supplies, etc.

	Reproduction New	Cost Depreciated
West Bend Heat & Light Co.	$549,508	$501,538
Milwaukee River Power Co.	72,709	63,046
Total	$622,217	$564,584
Net additions July 1, 1925—April 30, 1929	217,431	217,431
Total above	$839,648	$782,015
Estimated working capital including materials and supplies	41,950	41,950
Total	$881,598	$823,965
Going concern value	176,300	176,300
Cost of financing	52,900	52,900
Total	$1,110,798	$1,053,165
Completed cost of construction work now in progress:		
Change over Eastern System	20,650	20,650
New store room and garage	15,400	15,400
Second feed line West Bend to Random Lake, etc.	17,600	17,600
Various miscellaneous line rebuilding in entire district	10,770	10,770
Total	$1,175,218	$1,117,585

[1–6] The allowance for going value included above is entirely too high. It is believed that an allowance of 10 per cent of the physical value, in addition to the value of such property, will closely represent the value

as a going concern. The cost of financing, we believe, should be excluded and from the final value obtained by the Commission customers' contributions should be deducted amounting to $42,769. The allowance of $41,950 for working capital, including materials and supplies, appears reasonable and this figure is used in our estimate of earning value.

After careful study of all the facts and after giving such weight as we think reasonable and proper to the increased cost of construction over levels prevailing in earlier years, and after excluding, because paid for by customers the amount of $42,769, it is our conclusion that $743,804 represents the amount on which the company may reasonably ask for a return.

The revenues and expenses reported by the company may be summed up as follows:

	Year ended Dec. 31, 1928	Year ended July 31, 1929
Electric revenue	$215,000.70	$231,300.63
Net revenue from merchandise sales	4,071.81	1,091.71
Nonoperating revenue	150.60	86.18
Total revenue	$219,223.11	$232,478.52
Operating expenses	$106,876.80	$115,784.25
To reserve for uncollectible accounts		470.00
General taxes	14,137.40	19,255.44
Retirement expense	8,848.34	31,500.00
Federal taxes		7,850.00
Total	$129,862.54	$174,859.69
Available for return	89,360.57	57,618.83
Estimated earning value	708,798.00	743,804.00
Per cent return	12.6	7.8

The 1929 legislature passed an act requiring electric utilities to "keep separate accounts to show all profits or losses resulting from the sale of appliances or other merchandise," and providing that "no such profit or loss shall be taken into consideration by the Railroad Commission in arriving at any rate to be charged for service by any such public utility."

The Commission is now considering the questions of accounting involved in the administration of this act, some of which present considerable difficulty. Until uniform methods of accounting are devised for the merchandise business, it is difficult to determine the real profit or loss from such business. Application of the principles to be developed might show results from the merchandise business quite different from those shown above. For the purposes of this case the reported profit will be excluded from consideration. After definite accounting rules and practices have been developed the effect of the merchandise business can be more definitely determined and adjustment, if necessary, can then be made.

An examination of the above statement indicates that while total revenues increased for the latter period some $13,255, operating expenses were only increased $8,908. However, there is a very marked difference noted in the set-up for taxes and

for retirement expense in the two periods.

The company's property taxes in 1926 were $11,317. In 1927 it paid $12,635.50 and in 1928 it paid $15,345.16. Anticipating the same increase in 1929 from 1928 the utility appears to be accruing on the basis of about $18,000 exclusive of the state income taxes.

From the Tax Commission's records it is noted that the assessed value of the property of Wisconsin Public Utility Company for the year 1929 has been placed at $680,000 and that the ad valorem taxes to be assessed this company are set at $13,603.62 for this period. An estimate of the state income taxes, based on the average income for 1927, 1928, and as estimated for 1929, has been placed at $3,750, making a total of about $17,353.

Summarizing the estimated normal cost of operation, therefore, we have the following:

Revenues year ended July 31, 1929	$232,478.52
Expenses (operating—less management fees)	$109,180.37
Retirement expense	27,689.27
General state tax	13,603.62
Estimated state income tax	3,750.00
Total above costs	$154,223.26
Available for return	78,255.26
On the basis of earning value	10.5%
On the basis of 7% of earning value, estimated reduction	26,188.98

At the hearing held in this case the utility proposed certain modifications of its rates which incorporated in the residential lighting schedules service charges and energy charges whereas the existing schedules for this class of service contain no separate service charge components. It proposes to supply service in West Bend and the village of Barton at the same rates instead of having a differential of 1 cent per kilowatt hour. For the other villages and rural territory, it proposes to establish a small differential. The utility estimates an annual reduction in revenue of approximately $10,000 provided its proposed schedules are approved. The existing and the proposed net rates are shown below. [Tables omitted.]

A complete customer analysis has been made in order to check the probable reduction under the proposed schedules, and as a basis for the Commission's action in adjusting rates.

A comparison of bills under the existing residential lighting rate and the proposed residential service charge rate indicates that all customers using from 0 to 20 kilowatt hours per month will have their bills increased if the latter schedule is made effective. The following tabulation shows the distribution of monthly bills in West Bend for the year ended December 31, 1928.

Kw. hrs. used per month	Number of bills	Total kw. hrs. consumed
0	25	0
1	47	47
2	52	104
3	99	297
4	142	568
5	184	920
6	268	1,608
7	325	2,275
8	384	3,072
9	348	3,132
10	438	4,380
10–15	2,161	28,087
15–20	1,918	34,379
Total	6,391	78,869

The total bills issued amounted to 11,006 and total kilowatt hours sold

pany would be by way of injunction and injunction does not lie to compel one person, corporate or otherwise, to order another person to do something which the latter (in this case the meter reader) could be made to do by legal means. This implies that the meter reader *could* be compelled to furnish the information desired. This is true. The meter man must answer a subpoena to testify but, as a practical matter, unless the meter reader goes and tells all he knows in the first place, the government would never find out enough to justify starting proceedings, and unless proceedings are commenced subpoenas cannot be issued.

Speaking strictly from a legal standpoint then, the policy of the management on this question is discretionary. To refuse co-operation with the government may, in the opinion of some, be *sabotage,* and, in the opinion of others, may be smart public relation policy. But in any event each utility has the right to decide the question for itself.

There is a more minor question on this subject that might as well be assumed here and that is whether or not the meter reader could refuse to testify on grounds that what he saw was "privileged information" coming to him in the course of his employment. There has recently been a great deal of confusion about what constitutes privileged communications which are exempt from the laws of evidence.

There are in law four situations where communications between persons are known as "privileged" and the party obtaining the information in any of these ways could not testify concerning it without the express consent of the party imparting the information. These were doctor and patient, priest and penitent, lawyer and client, and husband and wife. The reason for their exemption is purely one of public policy. If people thought that the doctors would ever use their admissions against them, they would not tell the truth or else stay away from doctors altogether which would be a bad thing for public health. So with the other professions and the domestic relations.

Not long ago a court decided that certain newspaper reporters obtaining information about liquor law violations in the course of their employment were not "privileged" in the sense that they were exempt from giving testimony. Because of their refusal to testify these journalists spent a little time in jail for contempt of court. If newspaper reporters are not privileged, *a fortiori* it will be seen that meter readers could not refuse to give evidence, once they were subpoenaed by a court on grounds of legal privilege.

No Protection for Competing Utilities in West Virginia

THE case of Huntington Brick & Tile Company *v.* United Fuel Gas Company, also known as the Huntington Gas Case has been shunted about from Commission to court and court to Commission so often

that we are led to wonder if we have heard the last of it. The controversy, which has already been mentioned twice in these pages, arose when one gas company which is selling gas considerably cheaper than another gas company in and about Huntington, West Virginia, refused the request for service of a brick company and certain other industrial consumers which were using large quantities of natural gas.

The utility said it was not obliged to serve a consumer already being served by a competitor—to wit, the other gas company. Probably the real explanation was the fact that both companies were owned by the same holding company and there was naturally more profit in serving these customers at a higher rate than at a lower one.

When the case first came before the West Virginia Commission the utility was ordered to extend service. That was proceeding Number 1. The utility appealed and the supreme court reversed the Commission and sustained the utility. That was proceeding Number 2. Later on another application was made and the Commission found that the facts were the same as in proceeding Number 1, and giving due regard to the opinion of the higher court dismissed the complaint. That was proceeding Number 3. Again there was an appeal. This time the industries appealed and again the court disagreed with the Commission's order, setting it aside and sending the case back for a decision on its merits. That was proceeding Number 4.

In its most recent decision, which is proceeding Number 5, the Commission reaffirms its original opinion and directs the cheaper company to extend service. The most important point in the decision is the holding that the mere authorization of two competing utilities in the same field is evidence of the will of the state that the utility should not be protected from each other but must meet all reasonable demands for service. This state will was said to be manifested through municipal ordinances authorizing the operation of competitive utilities where the municipalities have legislative authority to make such ordinances. In such a situation the Commission confessed its own inability to give protection to a utility's monopoly—particularly the junior utility. The opinion states:

> "The state's authority to prevent competition in utility service, in the interest of the public to be served, cannot be exercised effectually except at the time of the installation of the facilities and the inauguration of the service. In many jurisdictions that power is delegated to the state regulatory Commission, as evidenced by cases cited by counsel. Our legislature, however, has lodged exclusive power in municipal councils and county courts to grant or refuse franchises to natural gas pipe line companies, and to other utilities. That authority carries with it a sound discretion as to the public necessity and convenience to be served by one or a dozen utility concerns offering the same service. When that discretion is exercised by granting a franchise to one utility and refusing all others, the result is a complete monopoly and perfect protection from ruinous competition and economic waste, in accordance with the ultimate theory of state regulation. On the other hand, when the municipal authority which has been exclusively designated by the legis-

lature to exercise that sound discretion, does exercise it in the determination that the public interest is better served by the granting of franchises to two gas companies, as was the case in this instance, then the legislative intent as expressed by the municipal agent is not manifest to protect either utility from the competition of the other. And the development company having voluntarily sought and accepted a junior franchise, can not now be heard to complain."

Huntington Brick & Tile Co. *v.* United Fuel Gas Co. Case No. 1793.

Indiana Railway Is Compelled to Protect Its Own Monopoly

WHEN we found out that the utility business was not susceptible to the old axiom about competition being "the life of trade," when we learned that a utility's service is usually a natural economic monopoly in any given community requiring legal guardianship in order to avoid the waste and ruin of unnecessary duplication, we established the policy of protection from competition. Heretofore this policy has usually been explained as an aid which the people through their duly authorized tribunal—the Commission—extends to the utility to avoid the waste of duplication and in return for adequate service at reasonable rates. As far as we know it has usually been assumed that it was simply an offer by the state to the utility which the utility could refuse or take, depending on whether they wanted competition or protection from competition.

If a recent decision from the Indiana Commission is followed, however, we may have to overhaul our theories about protection from competition as a regulatory policy. Is the utility under any obligation to accept this protection? Can the state through its Commission push this protection on the utility whether they like it or not? When the state promises to protect the utility in any given field and the utility accepts, is there then a mutual obligation on the part of the utility to preserve the field from competition?

This seems a rather novel idea about utility monopolies and came about in this way. The Northern Indiana Power Company owns certain tracks, poles, trolley wires, and other railway accouterment in an outlying district of Kokomo in connection with its interurban service. The company also operates a local street railway system in the city proper. The inhabitants of the district asked for the extension of street railway service over the interurban track. The company refused to extend the new service claiming that the matter had not been brought before the city council and that the latter by ordinance had not ordered the company to extend the service requested.

The Commission in granting the petition pointed out that this was not an "extension of service" in the sense of being a new addition to the plant since the track, poles, etc., were already in place and were under the control of the company. If this system were not so operated, possibly bus or

other competition would be encouraged to appear. Under these circumstances could the Commission order the extension? Here is a passage quoted from the opinion of the Public Service Commission:

"That the Northern Indiana Power Company should be protected in this field from detrimental competition and should, in turn, protect the transportation field in Kokomo by rendering service to such parts of the city as need the service, provided the extension of service will not result in an undue burden upon the remainder of the transportation system.

"That petitioners herein represent a community of more than 120 families who need street car or bus service in going to and from their places of employment.

"That public transportation facilities should be made available to these petitioners by the respondent herein at least between the hours of 6:30 A. M. and 8:30 A. M., 12:30 P. M. and 2 P. M., 5 P. M. and 7 P. M.

"That respondent herein should be permitted to adopt either street car service or bus service during the hours suggested above, provided that bus service (if adopted) be operated with the same advantages, to patrons, of transfer, destination, and adequate frequency as street car service (if adopted) would afford."

Re Northern Indiana Power Co.

City Fights Move of Utility to Reduce Rates

THE millennium is here. A utility company in Missouri is insisting on what it claims is its legal right to earn not more than a fair return on its investment. In other words, it is fighting for the right to reduce its rates. Not only that but it is receiving strenuous opposition from the city in which it operates. Cities usually fight for reductions but the city of Salem is actually fighting against it. The utility is attempting to minimize its own property valuation and the Missouri Commissioners are wondering if they can believe their ears since, according to Chairman Stahl, it is the first situation of its kind in the history of the Commission.

This apparent reversal of the usual procedure can be explained, however, by the fact that sometime ago the city installed a municipal electric light plant to compete with the privately owned company. To defeat this move the utility has asked the Commission for authority to reduce its rates in order to prevent the municipal plant from getting enough business to meet operating expenses. If it is successful, it may drive the city out of the electric business, so there is apparently a method in the seeming madness of the private company. The company, in a hearing before the Commission in Salem last December, sought to show that it is now actually earning more money than is reasonable, that its receipts were high and its expenses low. The city, on the other hand, contended that the return of the private utility was not excessive and that it was not only entitled to the return it was getting but *obliged* to take it and to charge enough rates to get it.

Although this situation is quite novel, the legal principle involved is not new. Utilities are entitled to

charge rates sufficient to yield a reasonable return certainly. Furthermore it is fairly well established that they can be compelled to charge sufficient rates to produce such a return though they might want to serve for less. This is because it is in the interest of the public to protect a utility from impairing its own financial security and consequently its existence by unwarranted rate cutting.

Consequently, the question presented in the Salem controversy is whether the rates now charged by the privately owned utility are more than sufficient to produce a fair return on the value of the property. If it is proven the return is excessive on the fair value of the property involved, a reduction is in order whether the proof comes from the city or from the utility itself.

That is why the private company, to gain its point, is minimizing its own property value, and that is why the city is taking the opposite viewpoint. The fair value of the property will probably decide the case and that is a question of fact for the Missouri Commission.

Motor Passage Brokers Are Not Subject to Regulation

SOME weeks ago there appeared in a Denver, Colorado, newspaper a running advertisement reading as follows:

> "Do you wish passengers? Do you wish cheap transportation? In either case, register with us. Mutual Auto Travel Service, 425 Charles Building, Ph. Main 5521."

Shortly after these advertisements appeared, the Colorado Commission made an order for an investigation, requiring the operators of the business to show cause why the Commission should not direct them to desist from further operation.

Upon investigation it was found that these operators proposed to make it possible for some person desiring to make a trip to some certain city to ride in an automobile with some other persons who happened to be motoring to that city at the time in question. They stated positively that it was not their intention to put people desiring transportation in touch with any common carrier operating unlawfully. Of course these transportation brokers received compensation for their service in getting parties together which might be paid by either the passengers or the carrier.

The Colorado Commission, after giving this rather novel proposition its due consideration, was of the opinion that the operations were not within the scope of Commission regulation. The opinion states as follows:

> "The Motor Vehicle Act, the enforcement of which has been committed to this Commission by the legislature, simply prohibits the operation, without a certificate, of motor vehicle carriers or motor vehicle common carriers. If Brown happens to be making a pleasure or business trip from Denver to Chicago in his automobile and his neighbor Smith goes with him, paying compensation for the transportation, and Brown does not make a business of transporting passengers, it is obvious that

he does not violate the law by taking his neighbor Smith with him. If Brown is making the trip and knows of no other person to afford him companionship on the trip and to pay a part of the expense thereof, we cannot understand how an intermediate agency, such as that offered by the respondents, violates the law in putting Brown and Smith in touch with each other. If Brown were making repeated trips on which he carried passengers for hire, whether over a particular route or otherwise, he would be violating the law, and the respondents in aiding him in so doing would likewise be violating the law. But if the one doing the carrying is not, under our statute, a common carrier, one aiding him in carrying on the business, which is not that of a common carrier, cannot be violating the law."

Re Hanes, Case No. 503.

Parent Teacher Group Not a Proper Party to Start Railway Rate Case

It is a principle of law that no court has jurisdiction to decide a controversy unless the party or parties initiating the proceedings are "parties in interest." That is why one frequently hears of a "taxpayer suit" with reference to some proceeding questioning some governmental act or policy. It simply means that the only ground for the plaintiff to question the matter is his interest as a taxpayer. One who pays taxes, of course, has a legal right to question in a court of law any improper disposal of tax funds. But, on the other hand, if it is shown that tax funds are not jeopardized the suit must be dismissed no matter how improper the act might be in any event. In other words, the plaintiff has failed to "show his interest" in the subject matter of the suit.

It follows from this that no court has any authority to initiate proceedings on its own motion. To quote the words of an English jurist: "Blood may run through London's streets and evil deeds cry to heaven for vengeances and yet all the King's justices are powerless unless there be one to bring the matters properly to court."

Commissions sometimes differ from courts in two ways. First, it may take jurisdiction of the premises upon a complaint by an offended party without complainant being made a formal party to the proceedings. Secondly, it may in some states take jurisdiction on its own motion without any formal complaint whatever. This makes Commission regulation more flexible than court procedure and permits the former to investigate matters promptly without the red tape of filed pleadings.

Minnesota is apparently one of the few states where the jurisdiction of the Commission is not so broad. In 1921, a law gave the Commission power to regulate fares of street railway companies but included a provision that it could take action only upon a formal petition presented by "any street railway or city." Some weeks ago a resolution was adopted by the Parents and Teachers Association of a Minneapolis school requesting the Commission to adopt a 5-cent fare for school children.

The Commission asked an opinion of the attorney general, John F. Bonner, as to its power to take jurisdiction on such a basis. The opinion of that official was as follows:

"You submit to us a form of resolution directed to your Commission, signed by certain individuals as the legislative committee of the Parents and Teachers Association of the Morris Park School at Minneapolis, requesting 'your honorable body to use your official power to reduce the street car fare to 5 cents for school children in Minneapolis at such hours necessary to go to and from school.'

"You request this office 'for an opinion as to the authority of this Commission in the premises.'

"I assume that your inquiry is directed to your authority to institute on the basis of this resolution an investigation of the question as to whether or not you shall require the Minneapolis Street Railway Company to establish a special rate for the carrying of school children over its lines within the city of Minneapolis.

"I am of the opinion that the authority to initiate an investigation of the question as to whether or not your Commission shall require the Minneapolis Street Railway Company to establish a special rate for transporting the school children of Minneapolis over its street railway lines within that city is limited to the city of Minneapolis and the street railway company. It is my opinion that such a proceeding can be initiated before your Commission only on formal petition by either the city of Minneapolis or the street railway company.

"Prior to the enactment of chapter 278, Laws 1921 (§§ 4816–4830, Mason's Minnesota Statutes 1927), your Commission had no authority to regulate the rate of fare to be charged by a street railway company operating a system of street railway lines lying wholly within a city in this state. This act placed this power in your Commission. Therefore, the provisions of this act and these alone must be consulted to determine the extent of the power over this subject vested in your Commission and the procedure which must be followed.

. . .

"The situation presented by your inquiry and accompanying resolution suggests no change in property values or cost of service, and obviously does not come within the power vested in your Commission by this provision."

Four Standards of a Public Utility's Service

"IN *my opinion the corporations were organized to give adequate and efficient service. This is the first standard they should meet.*

"The second standard is that the rates should be as low as is consistent with good service.

"The third, that there should be progressive methods, both of operation and rate-making.

"And the fourth, that there should be publicity in all matters connected with finance and indirectly connected with returns in every way."

—DR. ARTHUR T. HADLEY

(In a recent statement before the New York Commission on Revision of Public Service Law)

Public Utilities Reports

COMPRISING THE DECISIONS, ORDERS, AND RECOMMENDATIONS OF COURTS AND COMMISSIONS

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TITLES

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[November 4, 1929.]

APPLICATION *of a taxicab operator for authority to render additional service; denied.*

By the COMMISSION: On October 5, 1929, the City Cab Service, Incorporated, filed with the Commission its application to operate fifteen additional taxicabs under its certificate No. 3, as by application on file will fully appear.

Said application was assigned for a hearing at the office of the Commission, Room 41, State Capitol, Hartford, on October 18, 1929, of which notice was given to the applicant and to all other parties of interest, as by notice and return, on file, will fully appear, and at which time the parties appeared and were fully heard.

This application for authority to operate an additional number of taxicabs in Hartford and vicinity was heard at the same time with similar applications of existing certificate holders and new applicants for a certificate of public convenience and necessity in Hartford.

As the principal issue in all of these applications is public convenience and

necessity, it is thought desirable at this time to discuss at some length the principles involved.

[1] The early cases heard by the Commission for certificates of public convenience and necessity to operate taxicab service under the provisions of Chapter 292 of the Public Acts of 1929, were comparatively easy of adjudication, as the statute created a presumption of public convenience and necessity for the operation of all taxicabs in service on and before a certain date, to wit, January 1, 1929. In practically all cases where such service existed, the statutory presumption has been confirmed by the Commission and a certificate issued to each applicant for substantially the same number of cabs in service as were in service by each applicant on and before said date.

The statutory presumption of public convenience and necessity was construed by the Commission to apply to the person, association, or corporation operating taxicabs on and before said January 1, 1929, and limited to the number of cabs at that time registered and in service by each such person, association, or corporation.

So that, in the earlier applications, the question of public convenience and necessity was not seriously involved.

At the present time new applicants, not operating taxicabs either on or before or since said January 1, 1929, asking for a certificate, and all certificate holders asking for an increase of the number of cabs originally authorized, must show that public convenience and necessity require the operation of the additional taxicabs and service requested.

The determination of public convenience and necessity for the operation of any given amount of scheduled transportation service over a prescribed route or between fixed termini, may be arrived at with a reasonable degree of accuracy. The determination of public convenience and necessity for the number of taxicabs that should be operated within a given territory is a much more involved and difficult problem.

The operation of a taxicab is not confined to any schedule or to any street or streets, but may go whenever and wherever the patron at the time desires. The demands for taxicab service are extremely fluctuating, depending upon weather and special local conditions; it occupies a more or less competitive field, and is by its nature a more or less competitive industry.

Our state, however, in the desire to protect both the industry and the public, to conserve for actual needs our over-congested arteries of public travel, and to promote the safety and dependability of taxicab service, has assumed, through the office of this Commission, the regulation of taxicab service and the limitation of the number of taxicabs to be operated in our streets, to the convenience and necessity of public travel in taxicabs.

[2] Some communities have undertaken to determine the question of public convenience and necessity based upon the total population of the territory served, and the figure of 40 cabs for every 100,000 of population has been suggested. This may be a convenient yard stick of measurement, but it is an indisputable fact that certain cities, on account of ac-

quired riding habit, other convenient transportation facilities, social, commercial, industrial, and other local conditions and the particular topography of the city, may require more taxicab service than some other cities of equal or greater population.

Ordinarily taxicab service is not in competition with street railway or bus service, or vice versa, and yet a territory having a large net-work of street railway and motor bus routes, for a more or less mass transportation at cheap rates may decrease the demand for taxicab service; and a low flat rate for taxicab service carrying two or more passengers regularly over a given route, might develop into serious competition with street railways.

The demand in any community is necessarily fluctuating. Stormy weather and special events may largely overtax the normal requirements.

Where there are several different operators of taxicab service in a given territory, it is possible that one or two operators, on account of type of equipment, local popularity, special form of rates, or other local conditions, may at times find their equipment too limited to supply the demands made upon them, while other taxicab operators are idle at the public stand.

These are all factors which make difficult the determination of public convenience and necessity in any particular community, but the total number of authorized taxicabs in any community, available for service by any one demanding, should have an important bearing on the question of public convenience and necessity.

[3] It is not good public policy to authorize an excess of public motor service in our already congested streets and highways.

It is an immutable principle of sound and successful business that a particular service must be operated on a paying basis, in order that the public may receive the character and efficiency of service required.

[4] While the taxicab business has been considered a more or less competitive industry in which anyone desiring might engage in cut rate or other form of competition with others, the legislative enactment creating state control and regulation over the operation, and limiting service to the public convenience and necessity of the community, necessarily removes to a large extent the competitive feature, and calls for only such adequate and dependable service at reasonable rates as the community may require. The requirement of public convenience and necessity removes the industry from destructive competition and from those desiring to engage for personal reasons or profit, when the field is already supplied with sufficient taxicab service.

[5] Where certificate holders make application for an increase in number of cabs already authorized and at the same time new applicants not heretofore engaged in the taxicab business make application for a certificate of public convenience and necessity to operate taxicabs in the same territory, and it is found that public convenience and necessity require more taxicab service in the particular territory, the Commission believes, following the legislative presumption and preference for all those engaged in the business on a certain

date, that the established certificate holders, if willing and qualified, should have the preference.

[6] As to allowing a limited number of additional cabs between different already certified applicants, the Commission must exercise its best judgment and discretion, which may result in one certificate holder obtaining authority for the total necessary additions, because of type of equipment, superior competency of operators, and general character of service.

[7] Cheap rates and, therefore, a temporary large demand for service do not necessarily outweigh, in meeting the public demand, the superior equipment and safer operation made possible by slightly higher rates.

As certain elements of the public require or are satisfied with a quality of taxicab service different from what certain other elements require or are satisfied with, makes difficult the establishment of an absolute standard of service and uniformity of rates. All elements of the public, however, should receive, and under public regulation are entitled to receive, to the exclusion of all others, a reasonably safe and dependable service in type of equipment and skill and character of operators, whatever the cost or reasonable rate for such service may be.

The beneficient results of public regulation should tend to raise the standard of taxicab service, and eliminate destructive cut-rate competition which ultimately destroys the industry and deprives the public of a necessary service.

[8] "Taxicab," strictly speaking, means a metered cab, where the service is metered and paid for in strict accordance with time and distance, and represents an equitable form of rate. There has grown up, however, in the taxicab industry, the so-called flat rate system, with varying types of sedan and other motor vehicles. While it may be desirable to standardize taxicabs and taxicab service, the unmetered cab has become so numerous and the flat rate so extensive that any attempt at this time to standardize to a metered cab and service would work a hardship to a considerable portion of the industry. The Commission feels, however, that the metered cab with reasonable meter rates is the logical form of taxicab service.

[9] Counsel for the applicant in the instant case correctly states that "Chapter 292, which places the taxicabs of this state under the jurisdiction of the Public Utilities Commission, contemplated safety of operation by limiting certificates to reasonable individuals or organizations. It never contemplated the prevention of expansion." In other words, if one of several certificate holders in a community, rendering safe and satisfactory service at rates not so low as to be destructive of his and the business generally, and not so high as to be an unnecessary tax or unreasonable rate upon the patrons of the taxicab industry, should be permitted to expand his business if public demand warrants. The desire to expand, and occasional excess of business, do not of themselves make a public demand or prove convenience and necessity for more cabs.

The estimated population of the city of Hartford is 175,000, and the

estimated population of the territory naturally served by the Hartford cab industry, including West Hartford, East Hartford, Bloomfield, and Wethersfield, is from 220,000 to 230,000. There are at present 136 authorized taxicabs in Hartford, located at different private and public stands.

No information has come to the Commission, and no evidence was submitted at the hearing coming from the general public or those patronizing the cab industry, that there is a dearth of cabs or cab service in Hartford, or any public demand for an increase applicable to either one or all of the cab operators.

In the instant case the applicant is authorized to operate 35 taxicabs, and the president of the company testified that most of its service came through telephone calls; that its business warranted the operation of more cabs; that at times its present number of cabs was insufficient to take care of the demand; that the company in its system of inspection could use at least five cars with taxicab markers; and that it should have, over and above its actual needs, extra taxicabs to replace those undergoing repairs.

No evidence, however, was introduced showing that the demand for its service, as reflected by gross or net income, had increased over and above that which had obtained up to the time the statutory regulation became effective when the company of its own volition could have increased the number of its cabs.

The application was opposed by a number of taxicab operators holding certificates from this Commission to operate taxicab service, on the ground that there was a sufficient—in fact over-sufficient number of taxicabs now in operation in Hartford and there was no public convenience and necessity for an increase.

[10] Although the applicant is a duly organized corporation, most of its drivers are working on a commission basis with a direct interest or ownership in the cabs they respectively operate; but their individual right to continue operating a taxicab under the certificate issued to the applicant is dependent upon the corporate action of the company.

At the time the statute providing for the regulation of taxicabs was passed, a considerable portion of the taxicab business in Connecticut was being conducted by mutual associations and combinations operating on an unbusiness-like policy.

This condition is gradually improving and under regulation when certificate holders, whether person, association, or corporation, will be held directly responsible for the operation of all cabs authorized by the particular certificate, a safer and more satisfactory service should result. Where the owner and driver of a public service motor cab pays the certificate owner a stated fee for the privilege of operating under the certificate holder's name and taxicab markers, and a percentage of his gross income, and in some cases weekly dues in addition, such an arrangement does not tend to increase the standard and safety of operation or assure the individual owner of continued business. Unfortunately situations of this kind now exist, due to the fact that individuals engaged in the taxicab business under the corporate or trade

name of another failed to make personal application and permitted the individual operation to apply on the quota of the applicant whose name was being used. The holder and owner of the certificate is the only party directly responsible to the Commission and to whom the Commission must look for the rendition of proper service. It necessarily follows under the motor vehicle law and for the proper statutory regulation of the industry, that the certificate holder must be either the owner or lessee of the taxicab in service under his certificate. This discussion of unbusiness-like methods is not intended to apply either solely or specifically to the applicant in the instant case, but to a very general condition existing throughout the state.

The applicant in the instant case has been operating less than four months under public regulation, and from all the facts presented the Commission is unable to find that public convenience and necessity require the additional service or taxicabs requested, at this time.

[11] Strict supervision and inspection by the company is commendable, but the use of taxicabs with taxicab markers for inspection appears unusual, and does not constitute convenience and necessity for public taxicab service.

For the reasons herein stated, the application is denied.

We hereby determine and direct that notice of the foregoing finding, order, and decree be given by the secretary of this Commission by registered mail to all parties in interest as by statute provided, on or before the 15th day of November, 1929, and due return make.

WISCONSIN RAILROAD COMMISSION

Re Wisconsin Public Utility Company

[U-3852.]

Valuation — Going value — Electric utility.

1. An allowance of 10 per cent of the physical value of an electrical utility was made for going concern value, p. 121.

Valuation — Cost of financing — Electricity.

2. Cost of financing was excluded from the final value of an electrical utility for rate-making purposes, p. 121.

Valuation — Customers' contributions.

3. Contributions made by customers were deducted from the value of an electrical utility to be used for rate-making purposes, p. 121.

Valuation — Working capital — Electrical utility.

4. An allowance of $41,950 was made for working capital of an electric utility having a total rate base of $743,804, p. 121.

Return — Percentage allowed — Electric utility.

5. Rates of an electric utility yielding a return of approximately 7.8 per cent were reduced to yield a return of approximately 7 per cent, p. 121.

Accounting — Merchandising — Statutory restrictions.

6. A reported profit by an electric utility from its merchandising operations was excluded from consideration of utility revenue for rate-making purposes where a statute provided that a utility should keep separate accounts and that merchandising profits and losses should not be taken into consideration in rate making, and where also there was a lack of uniform methods of accounting in both the utility and merchandising departments, p. 121.

Discrimination — Electrical rates — Residential consumers.

7. The Commission would not approve a schedule of electric rates which, while purporting to be a reduction, actually increased 58 per cent of the bills issued to residential consumers in one section, notwithstanding the fact that some of the customers were not carrying all of the costs which should have been allocated to them, p. 124.

Return — Operating expenses — Management fees.

8. Allowance of approximately 3 per cent of the gross income of an electric utility for management fees was eliminated from the operating expenses of the utility in rate-making proceedings where there was no evidence as to the actual cost of the services rendered, p. 124.

[October 31, 1929.]

INVESTIGATION *by the Commission on its own motion into rates, rules and practices of an electric utility; rates adjusted.*

By the COMMISSION: A preliminary investigation of the electric rates in effect in the West Bend and other territory served by Wisconsin Public Utility Company having indicated that a reduction might be made, a formal investigation was instituted June 12, 1929, on motion of the Commission.

Hearing was held at Madison, Wisconsin, July 11, 1929, the appearances being:

Wisconsin Public Utility Company, by W. Kuehlthau, Manager, and Donald A. Henry, Rate and Valuation Engineer; city of West Bend, by Henry O. Regner, Mayor, and Joseph Knippel, President of Common Council; village of Saukville by E. L. Eastman, Trustee; village of Fredonia by J. P. Gilson, member of Village Board; town of Fredonia by Emil Klemp, member of Town Board; Random Lake, by W. J. Hand, Village Clerk, and John Dries, Village President.

An appraisal of the utility's property as of July 1, 1925, was made by the Commission's engineering staff both on a split inventory basis and on a 1925 price basis. The values obtained for the electric department excluding nonoperating property but including the Milwaukee River Power Company property, were as follows:

	Reproduction Cost	Reproduction Cost Less Depreciation
Split inventory basis	$538,501	$441,532
1925 price basis	596,946	500,526

Due to the low output of the hydroelectric plant the above figure of $596,946, for example, representing the present day cost new value after applying overhead should not be allowed. On the basis of kilowatt hours output and value of power the above figure would be reduced by $29,000. On the same basis the figure of $538,501 would be reduced by $16,000.

The net additions to fixed capital accounts from July 1, 1925, to April 30, 1929, may be summed up as follows:

	Cost	Cost Less Accrued Depreciation
July 1, 1925—Dec. 31, 1925	$5,684	$4,988
Year ended Dec. 31, 1926	45,528	40,749
Year ended Dec. 31, 1927	84,865	78,925
Year ended Dec. 31, 1928	66,638	64,306
Jan. 1, 1929—April 30, 1929	13,778	13,778
Total additions	$216,493	$202,746

On April 30, 1929, the utility reported work in progress, estimated to cost $64,420. From an examination of the records of completed work as at July 31, 1929, there should be added to the above additions to fixed capital about $18,045.

The utility submitted an appraisal of its electric plant and property made by Spooner & Merrill as at July 1, 1925, which is summed up below, together with the additions and allowances for working capital, materials and supplies, etc.

	Reproduction New	Cost Depreciated
West Bend Heat & Light Co.	$549,508	$501,538
Milwaukee River Power Co.	72,709	63,046
Total	$622,217	$564,584
Net additions July 1, 1925—April 30, 1929	217,431	217,431
Total above	$839,648	$782,015
Estimated working capital including materials and supplies	41,950	41,950
Total	$881,598	$823,965
Going concern value	176,300	176,300
Cost of financing	52,900	52,900
Total	$1,110,798	$1,053,165
Completed cost of construction work now in progress:		
Change over Eastern System	20,650	20,650
New store room and garage	15,400	15,400
Second feed line West Bend to Random Lake, etc.	17,600	17,600
Various miscellaneous line rebuilding in entire district	10,770	10,770
Total	$1,175,218	$1,117,585

[1-6] The allowance for going value included above is entirely too high. It is believed that an allowance of 10 per cent of the physical value, in addition to the value of such property, will closely represent the value

as a going concern. The cost of financing, we believe, should be excluded and from the final value obtained by the Commission customers' contributions should be deducted amounting to $42,769. The allowance of $41,950 for working capital, including materials and supplies, appears reasonable and this figure is used in our estimate of earning value.

After careful study of all the facts and after giving such weight as we think reasonable and proper to the increased cost of construction over levels prevailing in earlier years, and after excluding, because paid for by customers the amount of $42,769, it is our conclusion that $743,804 represents the amount on which the company may reasonably ask for a return.

The revenues and expenses reported by the company may be summed up as follows:

	Year ended Dec. 31, 1928	Year ended July 31, 1929
Electric revenue	$215,000.70	$231,300.63
Net revenue from merchandise sales	4,071.81	1,091.71
Nonoperating revenue	150.60	86.18
Total revenue	$219,223.11	$232,478.52
Operating expenses	$106,876.80	$115,784.25
To reserve for uncollectible accounts		470.00
General taxes	14,137.40	19,255.44
Retirement expense	8,848.34	31,500.00
Federal taxes		7,850.00
Total	$129,862.54	$174,859.69
Available for return	89,360.57	57,618.83
Estimated earning value	708,798.00	743,804.00
Per cent return	12.6	7.8

The 1929 legislature passed an act requiring electric utilities to "keep separate accounts to show all profits or losses resulting from the sale of appliances or other merchandise," and providing that "no such profit or loss shall be taken into consideration by the Railroad Commission in arriving at any rate to be charged for service by any such public utility."

The Commission is now considering the questions of accounting involved in the administration of this act, some of which present considerable difficulty. Until uniform methods of accounting are devised for the merchandise business, it is difficult to determine the real profit or loss from such business. Application of the principles to be developed might show results from the merchandise business quite different from those shown above. For the purposes of this case the reported profit will be excluded from consideration. After definite accounting rules and practices have been developed the effect of the merchandise business can be more definitely determined and adjustment, if necessary, can then be made.

An examination of the above statement indicates that while total revenues increased for the latter period some $13,255, operating expenses were only increased $8,908. However, there is a very marked difference noted in the set-up for taxes and

for retirement expense in the two periods.

The company's property taxes in 1926 were $11,317. In 1927 it paid $12,635.50 and in 1928 it paid $15,345.16. Anticipating the same increase in 1929 from 1928 the utility appears to be accruing on the basis of about $18,000 exclusive of the state income taxes.

From the Tax Commission's records it is noted that the assessed value of the property of Wisconsin Public Utility Company for the year 1929 has been placed at $680,000 and that the ad valorem taxes to be assessed this company are set at $13,603.62 for this period. An estimate of the state income taxes, based on the average income for 1927, 1928, and as estimated for 1929, has been placed at $3,750, making a total of about $17,353.

Summarizing the estimated normal cost of operation, therefore, we have the following:

Revenues year ended July 31, 1929	$232,478.52
Expenses (operating—less management fees)	$109,180.37
Retirement expense	27,689.27
General state tax	13,603.62
Estimated state income tax	3,750.00
Total above costs	$154,223.26
Available for return	78,255.26
On the basis of earning value	10.5%
On the basis of 7% of earning value, estimated reduction	26,188.98

At the hearing held in this case the utility proposed certain modifications of its rates which incorporated in the residential lighting schedules service charges and energy charges whereas the existing schedules for this class of service contain no separate service charge components. It proposes to supply service in West Bend and the village of Barton at the same rates instead of having a differential of 1 cent per kilowatt hour. For the other villages and rural territory, it proposes to establish a small differential. The utility estimates an annual reduction in revenue of approximately $10,000 provided its proposed schedules are approved. The existing and the proposed net rates are shown below. [Tables omitted.]

A complete customer analysis has been made in order to check the probable reduction under the proposed schedules, and as a basis for the Commission's action in adjusting rates.

A comparison of bills under the existing residential lighting rate and the proposed residential service charge rate indicates that all customers using from 0 to 20 kilowatt hours per month will have their bills increased if the latter schedule is made effective. The following tabulation shows the distribution of monthly bills in West Bend for the year ended December 31, 1928.

Kw. hrs. used per month	Number of bills	Total kw. hrs. consumed
0	25	0
1	47	47
2	52	104
3	99	297
4	142	568
5	184	920
6	268	1,608
7	325	2,275
8	384	3,072
9	348	3,132
10	438	4,380
10–15	2,161	28,087
15–20	1,918	34,379
Total	6,391	78,869

The total bills issued amounted to 11,006 and total kilowatt hours sold

to 237,325. It is noted, therefore, that about 58 per cent of the bills and 33.3 per cent of the energy sold fell in this group. Approximately 532 customers would have paid $6,391 in service charges in excess of their actual bills during 1928 had the proposed schedule been effective.

The situation in the village af Barton and other villages served by this utility is similar to the above with respect to residential customers.

	Kw. hrs. per mo.	No. of bills issued 1928	Total kw. hrs. consumed	Total bills issued
Barton	0–20	1,210	13,830	1,802
Other villages	0–20	5,009	38,477	6,538
		6,219	52,307	8,340
Total kilowatt hours sold			129,549	

In formulating the schedules proposed by the Wisconsin Public Utility Company it appears the aim of the utility was to allocate to all customers and to the small customers particularly all or a major part of those fixed costs which were not covered in the minimum bills now in effect.

[7] The Commission has stated in its opinion in the Madison Gas & Electric Company Case (1928) P.U.R.1928E, 601, 605, that it recognized the fact that a demand and energy type of schedule, "when based upon scientific analysis of adequate operating statistics should distribute the cost of service somewhat more nearly in accordance with the factors from which it arises than the existing rate form. However, we do not believe a schedule should be approved at this time which, while purporting to be a reduction in rates, actually increases about 58 per cent of the bills issued to residential users in West Bend alone, even though some of these customers may not be carrying all of the costs that should be allocated to them on a strict cost basis.

[8] The utility is setting up as an expense over $6,600 per year as management fees, or approximately 3 per cent of the gross income. The question of such fees has been before the Commission in the Wisconsin Telephone Company Rate Cases (1926) P.U.R.1927A, 581, where the utility contended that the services rendered under the contract were very valuable, easily worth the 4 per cent of gross revenue paid therefor. The instant case is in point and we believe that this Commission in fixing rates is entitled to have in evidence the Central Public Service Corporation's actual cost of the services rendered if we are to include them or any portion of them in a statement of normal expenses. These data not being available an adjustment has been made eliminating the $6,600.

After considering carefully all the evidence before us in this case we find that existing rates of Wisconsin Public Utility Company, for those classes of service for which new schedules are herein provided, are unjust and unreasonable, and we conclude that schedules as set forth in the appended order will be just and reasonable. [Order omitted.]

Frank W. Winter et al.

v.

Androscoggin Electric Company

[F. C. 798.]

Evidence — Obligation to produce testimony — Rate case.

1. All relevant facts and data in possession of a respondent utility must be placed before the Commission to enable it to render fair and impartial judgment in a rate controversy, p. 128.

Accounting — Access to records by rate complainant.

2. Complainants in a rate controversy, through representatives appointed by the Commission, were given access to such records of the respondent utility as were pertinent to the issues involved, p. 128.

Commissions — Power to compel production of evidence.

3. The Commission has authority to order a public utility to furnish information and data in its possession relevant and material to a proceeding before the Commission, p. 128.

Accounting — Investigation of records — Proper parties.

4. Rate complainants wishing to investigate the records of a utility were required to furnish the Commission with the names of such representatives as they wished to employ, and only such individuals were permitted access to the matters under inspection, p. 128.

Accounting — Location of records — Production of evidence.

5. The Commission, in requiring the production in a rate case of utility records kept in different offices, designated the place where each item was to be produced, p. 128.

[October 22, 1929.]

COMPLAINT *by certain electric consumers against alleged unreasonable and discriminatory rates of an electric utility; preliminary order directing utility to submit certain records for inspection of the complainants.*

By the COMMISSION: This is a complaint brought under the provisions of § 43 of Chapter 55 of the Revised Statutes against Androscoggin Electric Company, alleging that its rates are unreasonable and unjustly discriminatory and that certain of its practices are unreasonable.

The Commission upon receipt of said complaint issued notice of investigation to the respondent company under date of May 15, 1929.

Said respondent company under date of May 22, 1929, filed motion for specifications, which was allowed under even date, and the complainants were ordered to file with the Commission within thirty days from the date of the order, specifications in writing, stating therein the particular act, omission, conditions, practices, or things made the subject matter of said complaint, and setting forth the exact nature of any and all matters and things to be proved in support of said complaint. The complainants complied with said order of the Commission, and on May 28, 1929, filed specifications.

The Commission upon receipt of said specifications made an investigation and, being satisfied that sufficient grounds existed to warrant a public hearing being ordered, furnished the respondent company with a written statement (containing said specifications) giving notice of the matters under investigation and advised the respondent company that at the expiration of ten days from the receipt of such written statement should it be made to appear that the cause of complaint had not been removed a public hearing would be ordered.

More than ten days elapsed and it was not made to appear that the cause of complaint had been removed. A conference was held in the meantime with representatives of the complainants and Androscoggin Electric Company, with reference to the date to be fixed for hearing of the complaint. After a full discussion of the matter, it was decided to hold hearing on September 25, 1929. Therefore, under date of August 30, 1929, the Commission issued a notice for public hearing to be held at the court house, Auburn, on September 25, 1929, at 9:30 o'clock in the forenoon. The hearing was held and notice was proved to have been given as ordered. Mr. Frank W. Winter appeared for the complainants and Honorable William B. Skelton and Everett H. Maxcy, appeared for Androscoggin Electric Company.

It appeared in evidence that the complainants on September 24, 1929, one day prior to the hearing, requested the respondent company in writing to submit for their examination and for use at the hearing:

1. The petition, documents on file and decree in the matter entitled U-409. All contracts, agreements, estimates, engineers reports of values, book, reproduction, depreciated and all other reports and estimates of values considered in the transfer of the Androscoggin Electric Company to the Androscoggin Corporation.

2. All books, schedules, plans, estimates, and other written evidence or vouchers substantiating the amount of fixed capital June 30, 1915.

3. All itemized accounts and vouchers proving the carried amount of fixed capital installed since June 30, 1915.

4. Itemized accounts of miscellaneous current liabilities from January 1, 1928, to September 21, 1929.

5. Itemized accounts and interest accounts of total consumers' deposits to September 1, 1928.

6. Itemized tax totals for 1928.

7. Itemized statements and vouchers for miscellaneous accrued liabilities to Sept. 1, 1929.

8. Complete itemized account of reserves for depreciation.

9. Complete itemized account of appropriation of reserve funds.

10. Complete itemized account of amount spent for actual maintenance with dates and complete itemized information.

11. Complete itemized statements covering purchase of power during the year 1928, giving exact dates and amounts purchased each day. Station log reports covering periods during which power was purchased.

12. Complete itemized account of office salaries and office supplies and expenses during 1928.

13. Complete itemized account of advertising from January 1, 1928, to September 15, 1929.

14. Complete itemized accounts, salaries of general officers, general office clerks, and general office supplies and expense.

15. Itemized account of law expenses from January 1, 1928, to September 15, 1929.

16. Complete itemized account of depreciation expense during the year 1928.

17. Complete itemized statements and vouchers for open accounts of $154,480.45 shown on page 29 of the Androscoggin Electric Company report for the year 1928.

18. Complete itemized statements of sale and price to each customer of all energy listed and described on Page 33 of the Androscoggin Electric report for the year 1928.

19. The log books for the year 1928 for Deer Rips, Littlefields, Barker Mill, and steam stations.

20. A full complete inventory of all property belonging to Androscoggin Electric Company, also a written statement of all the necessary relevant facts in relation to the operation of the Androscoggin Electric Company and its valuation and all the facts you have in your possession that will give the Commission information upon which they can base a fair judgment.

21. Also, the U. S. Income tax reports for 1928.

22. A complete itemized account of all expenses for newspaper advertisements, printing and circulation posters, literature, and all money spent for lunches, meetings and assistance in influencing the referendum election of September 9, 1929.

23. An itemized account of expense charged to Androscoggin Electric Company for services of legislative agents from January 1, 1921, to September 15, 1929.

24. A complete itemized statement of all expense for services of engineers in investigating values for Androscoggin Electric Company from January 1, 1921, to September 15, 1929.

25. All contracts concerning new construction of all kinds since control passed to Androscoggin Corporation.

26. All contracts, construction or otherwise, in any way making or modifying rates since 1922.

The respondent company did not comply with said request.

Counsel for the company at the hearing stated that while much of the material, information, and data could be made available, it would necessarily take time for its preparation and production; that the respondent company does not intend to raise any question as to the adequacy of the complaint and specifications, irrespective of whether they are strictly suf-

ficient or pertinent in the case; that it does not intend to raise any question of the sufficiency of the case which the complainants may make out upon their own testimony; that it stands ready to produce such information as the Commission desires in the case, and will raise no question relative to any orders which the Commission may issue regarding the production of data.

[1–3] This complaint as we view it is a rate case and all relevant facts and data in possession of the respondent company must be placed before the Commission to enable it to render fair and impartial judgment. In connection with this purpose, it is essential that the complainants, through representatives appointed by this Commission, shall have access to such books, accounts, papers, and records of the respondent company as are pertinent to the issues involved.

The authority of the Commission to order a public utility to furnish information and data is contained in § 7 of Chapter 55 of the Revised Statutes, which provides:

"The Commission may require, by order. . . the production within this state at such time and place as it may designate, of any books, accounts, papers, or records kept by said public utility and within its control in any office or place within or outside the state, or verified copies thereof instead, if the Commission shall so order, so that an examination thereof may be made by the Commission or *under its direction.* . . ."

[4] The complainants in the present case will furnish the Commission the names of such experts and assistants as they wish to employ, and only those will be permitted access to the matters under inspection, who shall be designated either in this order or by supplemental orders, as special representatives of this Commission for that purpose, so that they may be subject to the pains and penalties specified in § 5 of Chapter 55 of the Revised Statutes, for disclosure of any matters in connection with said inspection, except as directed by this Commission.

[5] It appears that most of the books, accounts, papers, and records to be inspected are kept at the respondent's office at Augusta, and some at its office in Lewiston. We shall designate in our order the place where each item is to be produced.

All data in case U-409 are on file with the Commission and are subject to examination during office hours; therefore, no order on that item is required.

Items 8, 9, and 16 of complainant's request, which refer to depreciation account, will be treated together in our order.

Counsel for respondent company at the conference held prior to the hearing expressed the hope, which was concurred in by the complainant, that by reason of the large expense involved a complete inventory and valuation would not be required. If during the progress of this case it appears that an inventory and valuation is required for a proper determination of the issues involved, a supplemental order will be issued. [Order omitted.]

Borough of New Brighton

v.

Beaver Valley Water Company

[Complaint Docket No. 7382.]

Sam S. Hanauer et al.

v.

Beaver Valley Water Company

[Complaint Docket No. 7436.]

Rates — Burden of proof — Tariff changes.

1. Where changes in existing tariffs involve an increased rate, burden of proving such increased rate reasonable is upon the public service company, but no such burden is to be cast upon the company to defend its rates upon complaints filed against existing rates, p. 130.

Rates — Burden of proof — Date of complaint.

2. The fact that a complaint, since discontinued, has been filed against proposed water-rate changes before the effective date thereof, does not have the effect of placing the burden of proof upon the utility as to complaints filed after the effective date of the change, p. 130.

[October 22, 1929.]

COMPLAINTS *against rates for domestic water service; dismissed.*

By the COMMISSION: The Beaver Valley Water Company, respondent in these proceedings, issued its tariff P. S. C. Pa. No. 4 on May 31, 1927, to be effective July 1, 1927, increasing rates for domestic service in the territory served by it. On June 30, 1927, the complaint of the Pittsburgh Wall Paper Company, Complaint Docket No. 7322, was filed with the Commission averring that the meter rates so increased were unreasonable and unjustified. As to this complaint, filed before the effective date of the new rates, "the burden of proof to show that such increased rate is just and reasonable" was "upon the public service company." (Article V, § 4).

Subsequently, the complaints of the borough of New Brighton and of Sam. S. Hanauer and others were filed with the Commission on August

11, 1927, and September 17, 1927, respectively. The record now indicates that various preliminary studies were made and conferences held between the parties, and on January 9, 1929, the complaint of the Pittsburgh Wall Paper Company was withdrawn by counsel representing the complainant. Finally, on July 3, 1929, the remaining complainants were advised by the Commission that if they desired to be heard in support of their complaints, the matters would be listed for hearing, but that otherwise these complaints of approximately two years' standing would be considered dropped and marked "closed." Hearing was had on the complaints of the borough and of the individuals forming the protest committee on September 12, 1929, at which, after presenting in evidence the new tariff and a statement of the company that the increased rates were necessary in order to put it in the financial position to make extensions and betterments to increase the standard of service of the property, complainants rested their case.

[1, 2] Complainants take the position that inasmuch as the complaint of the Pittsburgh Wall Paper Company was filed prior to the effective date of the tariff, so that in that proceeding the burden was upon respondent to show that its rates were reasonable, the burden of proof is also upon the company to sustain its rates upon the complaints now before the Commission. The Commission does not understand this to be the law. Article V, § 3, of the Public Service Company Law deals with the procedure involved in complaints made against effective rates. Section 4, following, deals with the procedure involved in complaints filed before the effective date of changes in existing tariffs. Where such changes in existing tariffs involve an increased rate, the burden of proving such increased rate reasonable is upon the public service company. No such burden is cast upon the company to defend its rates upon complaints filed against existing rates. Had the Pittsburgh Wall Paper Company seen fit to prosecute its complaint, respondent would have had the burden of sustaining its rates in that proceeding. That proceeding, however, was discontinued before the present cases came on for hearing and was never joined with them. Had all three complaints been heard and considered together for administrative convenience, the Commission could not have required respondent to assume the burden of proof as against the latter complaints. The superior court has already determined the Commission's duties in this regard and has required that in consolidating individual cases for purposes of hearing, the rights of the several parties must not be ignored: Baltimore & O. R. Co. v. Public Service Commission (1917) 66 Pa. Super. Ct. 403.

The Commission, therefore, could not under the law as laid down by the controlling decisions have placed the burden of proof in these complaints upon respondent company. In the absence of any evidence to sustain the allegations of the complaints, they must be severally dismissed. An order will issue accordingly.

Midland Trail Bus Line Company

v.

Staunton-Livingston Motor Transportation Company

[No. 19010.]

[— Ill. —, 168 N. E. 634.]

Certificates — Commission jurisdiction — Contractual rights — Court action.

When a certificate of convenience to operate a bus line has been issued to one party and is claimed by another on grounds of fraud, deceit, equitable ownership, and other matters, the Commission has no right to decide the controversy between them when, in order to do so, it would have to consider the same evidence that would be introduced in a suit pending between the parties and involving their contractual rights.

[October 19, 1929.]

APPEAL *by one motor carrier from an order of the Circuit County Court setting aside a certificate granted by the Commission to another motor carrier; lower court affirmed.*

APPEARANCES: Benjamin S. DeBoice and Levi Clodfelter, for appellant; L. E. Stone, for appellee.

PARTLOW, Commissioner: On May 24, 1927, appellant, the Midland Trail Bus Line Company, made application to the Illinois Commerce Commission for a certificate of convenience and necessity to operate a bus line over Route 12, from Lebanon to Sandoval, Illinois. The application named the Baltimore & Ohio Railroad Company, the Pioneer Transportation Company, and appellee, the Staunton-Livingston Motor Transportation Company, as operating transportation facilities in the territory. An order was entered November 7, 1927, canceling a certificate issued to appellee on May 7, 1925, and granting a certificate to appellant as prayed. An appeal was prosecuted to the circuit court of St. Clair county, where the order was vacated and set aside, and an appeal has been prosecuted to this court.

The evidence shows that this line was first operated in September, 1921, by Earl S. Acker before the route was paved. He testified that in January, 1925, he first learned that he had to have a certificate of convenience and necessity from the Illinois Commerce Commission and that a corporation would have to be formed before he could apply for the same; that he had a conversation with

William Falkenberg, who was the president and principal stockholder of appellee, in which Falkenberg told Acker that he might make application for the certificate in the name of appellee; that this plant would be quicker, would cost less money, and Acker could then operate under that certificate. Acker formed a partnership with his brothers-in-law, Herman and Walter Koch, and the three followed the suggestion of Falkenberg. They employed counsel and made application in the name of appellee for a certificate.

Evidence Shows Line Operated Independently.

Acker testified that he and his associates performed all the work in preparing their case, paid all of the expenses, and the only service performed by Falkenberg was that he testified as a witness before the Commission. The certificate was issued to appellee on May 7, 1925, it was delivered to Acker, it has remained in his possession since that time, and is now in his possession. Acker and the Kochs began operating the line in the name of appellee under this certificate. Appellee at no time owned any of the busses, paid any of the expenses, or received any of the profits. No report was made to appellee, and neither appellee nor Falkenberg had anything to do with the operation of the line. Appellee did not include this line in its report to the Commerce Commission in 1925, and later appellee stated that it was impossible to secure information relative to the operation of this line, and the same statement was made in its 1926 report.

On February 5, 1925, the oral agreement between Falkenberg and Acker was reduced to writing. It recited that a franchise had been or was to be procured for the operation of the line in the name of appellee; that the franchise had been worked up by Acker, and that he was to have the privilege of operating the line for his own use and benefit forever; that he was to save Falkenberg harmless on account of any claims, damages, or taxes on account of the operation; and that Falkenberg acknowledged the receipt of $5 in full for all rights and privileges therein granted as full compensation therefor.

In May, 1926, Acker and the Kochs incorporated the Pioneer Transportation Company and made a demand upon Falkenberg and appellee to assign the certificate covering the line in question. The demand was refused, and on June 5, 1926, the Pioneer Transportation Company, Acker and the Kochs, filed a bill for relief and injunction in the circuit court of Madison county against appellant, appellee, Falkenberg, the Commerce Commission, and others. This bill set out in great detail the facts as above stated, and prayed that a decree be entered finding that appellee had no right, title, or interest in the certificate issued to it on the line in question or in the present operation of that system except in trust for the Pioneer Transportation Company and Acker; that the Pioneer Transportation Company be decreed to be the owner of the right to operate said line; and that appellee be ordered to assign its certificate to the Pioneer Transportation Company and join in an application to the Com-

merce Commission for the approval of the same. The bill was later dismissed as to appellant, and the Commerce Commission. Appellee answered the bill, and the suit is still pending and undetermined.

Cancellation of First Certificate Is Asked.

On May 24, 1927, appellant made the application now before this court to the Commerce Commission for a certificate of convenience and necessity over this line. On July 15, 1927, appellee moved to continue the application without date, alleging the pendency of the injunction suit in the circuit court of Madison county and claiming that the suit involved the entire subject matter of the right to operate this line. The motion was argued but the Commission did not rule upon it, and on July 21, 1927, the evidence on behalf of appellant was heard by the Commission. Appellee did not appear at this hearing and the cause was continued to September 7, 1927.

On August 24, 1927, the Pioneer Transportation Company filed its intervening petition with the Commerce Commission, in which it charged that appellee never operated a bus over the line in question, that the only operation had been by the Pioneer Transportation Company, Acker and the Kochs; that the intervenor was the equitable owner of the certificate issued on May 7, 1925, in the name of appellee; that the certificate had been procured in the name of appellee at the suggestion of Falkenberg, who was seeking to defraud Acker, the Kochs, and the Pioneer Transportation Company out of the business they had developed; that due to the lack of finances with which to secure a new bus the Pioneer Transportation Company had rented busses from appellant, and arrangements had been made with appellant to co-operate with it in appellant's application for a certificate over the line, and appellant had agreed to employ Acker and the Kochs as bus drivers. Appellee was made a party to the intervening petition, and the prayer was that the certificate issued on May 7, 1925, to appellee be canceled and a new certificate be issued to appellant.

Commerce Commission Assumed Jurisdiction.

On September 7, 1927, appellee again insisted upon its motion to continue, stating that it had understood that appellant at the previous hearing would produce the witnesses it had arranged to have present at that time. It claimed that it did not have notice of the hearing on September 7th and and was not prepared to submit evidence; that it had no objection to any further evidence appellant might offer but the case should then be continued until after the decision of the case pending in the circuit court. At the close of this hearing the case was continued for two weeks. On September 21, 1927, only one witness testified for appellee, the evidence was closed and the case taken under advisement by the Commerce Commission. There is no dispute but that motor bus service over this line will serve the public, that it is necessary, and that it should be established and maintained.

On November 7, 1927, the Commerce Commission rendered a lengthy decision in writing, finding the facts

substantially as above recited. With reference to the motion of appellee to continue the hearing on account of the pending case in the circuit court of Madison county, the Commission found that the circuit court had no jurisdiction to issue a certificate; that such authority was vested in the Commerce Commission, together with the responsibility of seeing that the people receive proper public utility service; that if it was necessary in the decision of the case to pass upon the equities between Acker and his company and Falkenberg and his company it would be right and proper for the Commission to withhold its decision pending a final decree in the circuit court, but that it was unnecessary for the Commission, in arriving at a conclusion, to base its judgment upon the alleged fraudulent practices of Falkenberg and his company. It held that the certificate of May 7, 1925, issued to appellee, was procured with the fraudulent purpose of enabling a stranger to procure a certificate in the name of a company which was not interested in the matter, and that this fraud was inspired by Falkenberg; that appellee never operated busses over the line but wrongfully permitted them to be operated by individuals who were strangers to the record, and that in its report to the Commerce Commission appellee stated that it operated but one line and did not have access to the records of the line in question.

It was held that under § 29 of the public utilities act no certificate shall be assigned, transferred or leased unless approved by the Commerce Commission; that the operation of busses over this line by Acker and his associates under the contract between Falkenberg and Acker could not be recognized as an operation by appellee; that § 55 provides that unless a certificate is exercised within two years it shall be null and void; that the evidence shows that the certificate issued on May 7, 1925, to appellee has never been exercised by it and is, therefore, subject to be revoked. The conclusion was that the certificate of May 7, 1925, was null and void and should be revoked, and that a certificate should be issued to appellant as prayed in its petition.

Order Set Aside Due to Pending Suit.

There is nothing in the record to show the grounds upon which the circuit court of St. Clair county set aside the order of the Commerce Commission granting the certificate to appellant, but it is apparent that the order was based upon the fact that a suit was pending in the circuit court of Madison county involving substantially the same subject matter between substantially the same parties, and that the entire question was before that court for decision and was not before the Commerce Commission. In Board of Administration v. Peoria & Pekin U. R. Co. (1916) 273 Ill. 440, P.U.R.1916E, 795, 113 N. E. 68, it was held that in the case of two courts of concurrent jurisdiction, the one which first obtains jurisdiction of the subject matter will retain it and no other court can render its judgment or decree nugatory by subsequently assuming jurisdiction; that the Public Utilities Commission is not a court but is an administrative Commission charged with the per-

formance of certain executive and administrative duties, and that its powers are subject to the action of the courts in matters of which they have jurisdiction. It was argued in that case that the circuit court had no jurisdiction; that when the public utilities act went into force the effect was to abate pending suits, or at least to suspend them until the Commission had passed upon those within its jurisdiction. This court held that the Commission had no jurisdiction to adjudicate upon controverted rights of parties growing out of their contracts; that such rights were judicial questions, of which the Commission had no jurisdiction, and the legislature had no power to confer such jurisdiction upon the Commission or to take away or suspend the jurisdiction of the circuit court over such matters.

Testimony Concerned Matter in Litigation.

The bill was filed in the circuit court of Madison county before the application of appellant for a certificate was filed with the Commerce Commission, therefore, the circuit court acquired jurisdiction before the Commerce Commission. The bill filed in the circuit court set up in great detail most of the facts above stated. It prayed that a decree be entered finding that appellee had no right, title or interest in the certificate issued to it on the line in question, or in the present operation of that line, except in trust for the Pioneer Transporation Company and Acker; that the Pioneer Transportation Company be decreed to be the owner of the right to operate the line, and that appellee be ordered to assign its certificate to the Pioneer Transportation Company and join in an application to the Commerce Commission for the approval of the same. In order to determine the issues under this bill it was necessary for the circuit court to consider and determine the contractual rights and the dealings between the parties. The Commerce Commission has exclusive jurisdiction to issue or refuse to issue certificates of convenience and necessity but does not have jurisdiction to adjudicate the contractual rights of the parties. In revoking the certificate issued to appellee and in issuing a certificate to appellant the Commission necessarily heard evidence concerning the contractual relations and the dealings between the parties. The Commission recognized the fact that if it was necessary, in the decision of the case before the Commission, to pass upon the equities between the parties, it would be right and proper for the Commission to withhold its decision pending the final decree of the court. The finding then went on to recite that the certificate of May 7, 1925, was procured by fraud inspired by Falkenberg. This finding could only be based upon evidence relative to the contractual relations and the dealings between the parties. The intervening petition filed with the Commission by the Pioneer Transportation Company, which was one of the complainants in the bill filed in the circuit court, alleged that the Pioneer Transportation Company was the equitable owner of the certificate of May 7, 1925, issued in the name of appellee; that the certificate had been procured in the name of appellee at the suggestion of Fal-

kenberg, who was seeking to defraud Acker, the Kochs, and the Pioneer Transportation Company out of the business they had developed. The questions of fraud, deceit, the equitable ownership of the certificate, who operated the line and who was entitled to operate it, were questions pending in the circuit court and depended for determination upon the evidence introduced. The court acquired prior jurisdiction, the Commerce Commission had no authority to adjudicate these questions, and it was in error in revoking the certificate to appellee and in issuing a certificate to appellant prior to the determination of the case pending in the circuit court.

The order of the circuit court setting aside the certificate granted to appellant was correct, and it will be affirmed.

PER CURIAM.—The foregoing opinion reported by Mr. Commissioner Partlow is hereby adopted as the opinion of the court, and judgment is entered in accordance therewith.

Order affirmed.

ILLINOIS COMMERCE COMMISSION

Farmers Fountain Telephone Company

v.

Harrisonville Telephone Company

[No. 19201.]

Monopoly and competition — Telephones — Right of subscriber to service.

1. Telephone subscribers residing in a territory which had, for some time, been served by competitive exchanges were held entitled to select that service best meeting their requirements, p. 138.

Monopoly and competition — Telephones — Additional construction.

2. One telephone company operating in the same competitive territory with another for a considerable period was held not to be invading such territory by subsequent construction of a proposed additional line and the furnishing of additional switching service, p. 139.

[October 15, 1929.]

COMPLAINT *of one telephone company against the proposed activities of another; dismissed.*

By the COMMISSION: On May 3, 1929, the Farmers Fountain Telephone Company filed with this Commission formal complaint in which it sets forth that it is a public utility organized and existing under and by

virtue of the laws of the state of Illinois, and as such is engaged in the operation of a public utility with its principal place of business at Columbia, Monroe county, Illinois; that the Harrisonville Telephone Company, the respondent herein, is a public utility and that as such is subject to the provisions of the act for the regulation of public utilities; that the Harrisonville Telephone Company is seeking to build a pole lead and line directly paralleling the lines of the complainant for a distance of approximately 2 miles directly west of Waterloo into territory served by the complainant and which was not previously served by the respondent herein; that the Farmers Fountain Telephone Company has ample facilities and is willing to furnish the service necessary in the territory referred to; that the building of the said pole line as proposed by the Harrisonville Telephone Company will invade the complainant's territory and will diminish the value of business of the said complainant and will greatly interfere with the ability of the complainant to furnish proper service.

In answer to the complaint the respondent herein denies that the construction of the proposed line is an invasion of the territory of the Farmers Fountain Telephone Company and avers that the territory in question is a part of the territory served from the Waterloo exchange of the Harrisonville Telephone Company and that this territory does not belong exclusively to either company.

All interested parties having been notified the matter came before the Commission for hearing at Springfield on July 17, 1929, at which time all interested parties appeared or were represented by counsel.

From the evidence of record it appears that both the Farmers Fountain Telephone Company and the Harrisonville Telephone Company furnish telephone service inside of the city limits of Waterloo. The Harrisonville Telephone Company owns no rural lines but furnishes rural service on a switching service basis to the farmers in the vicinity of Waterloo who have constructed lines to connect with the lines of the Harrisonville Telephone Company within the corporate limits and who own and maintain the said lines. The Farmers Fountain Telephone Company furnishes rural service in the vicinity of Waterloo particularly in the direction of Valmeyer, Illinois, and according to the evidence has approximately 75 stations connected to its Waterloo exchange, part of which appear to be inside of the corporate limits of Waterloo and part of which are in the rural district. The Harrisonville Telephone Company, the record shows, furnishes service to approximately 400 subscribers in the city of Waterloo and also furnishes service to 159 switching service stations in the immediate vicinity thereof.

It appears from the evidence of record that the proposed invasion claimed by the Farmers Fountain Telephone Company is in a westerly direction from Waterloo along State Highway No. 156 and extends practically from the city limits of Waterloo to a point where the state highway crosses Fountain Creek, a distance of 2½ miles, then by a circuitous route in the same general direction to a point known as Foster Pond.

The evidence of record shows that no construction whatever is contemplated at this time between Foster Pond and Fountain Creek and that part of the complaint appears to have been made through error or some misinformation on the part of the complainant so that the evidence in this case was directed to that section of the proposed invasion lying between the city limits of Waterloo and Fountain Creek. The record shows further than nine subscribers within the area referred to have organized a switching service line and have made application to the Harrisonville Telephone Company to furnish them with switching service. Inasmuch as the construction of the new line required a right of way or permit from the State Highway Department, it being parallel to the hard road, application appears to have been made for such permit. The switching service subscribers appear to have been advised that a permit could not be issued to them inasmuch as they were not a corporation but that a permit could be issued to the Harrisonville Telephone Company for the construction of this circuit. Arrangement, therefore, appears to have been made whereby the Harrisonville Telephone Company will construct or supervise the construction of the said line and that the subscribers receiving switching service will pay the entire cost of the construction and will own and maintain the line after it is constructed. The Farmers Fountain Telephone Company now has a pole lead along the state highway over the distance in dispute carrying rural circuits that previously furnished service to the territory in question and to points beyond as far as Valmeyer. However, it appears that the nine applicants for service in this territory although at some previous time subscribers of the Farmers Fountain Telephone Company had discontinued the service and had been disconnected therefrom from periods ranging from several months to several years before the filing of the complaint. Each of the said applicants testified that the service received from the Farmers Fountain Telephone Company did not meet their requirements and was as a matter of fact practically useless to them in the conduct of their social and business affairs.

The evidence also shows that this particular territory although it has never been served by the Harrisonville Telephone Company lies immediately adjacent to Waterloo; that the Harrisonville Telephone Company furnishes rural service to subscribers in practically every direction from Waterloo and that such service is furnished to subscribers to the north and south of the section in question and to subscribers living beyond the particular territory in dispute; and that the Harrisonville Telephone Company proposes to furnish service to this locality on the same terms and conditions under which the remainder of the territory adjacent to Waterloo is served.

[1] It is evident from the record that the Farmers Fountain Telephone Company and the Harrisonville Telephone Company operate competitive exchanges in the town of Waterloo and vicinity and that this condition has existed for some time past and that, such being the case, the subscribers residing in the territory

served should be entitled to select the telephone service which best meets their requirements.

[2] The Commission is, therefore, of the opinion and finds that the Farmers Fountain Telephone Company and the Harrisonville Telephone Company operate in the same competitive territory in Waterloo and vicinity and that there will be no invasion of territory of the Farmers Fountain Telephone Company by the Harrisonville Telephone Company by the construction of the proposed line or by the furnishing of switching service by the said Harrisonville Telephone Company to subscribers along State Highway No. 156 between the corporate limits of Waterloo and a point approximately 2 miles west thereof, and that the complaint of the Farmers Fountain Telephone Company relative to invasion of territory should be dismissed.

It is therefore *ordered* that the complaint of the Farmers Fountain Telephone Company v. Harrisonville Telephone Company relative to proposed invasion of territory of the former company by the latter company, be, and the same is hereby dismissed.

NORTH DAKOTA BOARD OF RAILROAD COMMISSIONERS

Re Clayton Farmers Telephone Company of Bowbells

[Case No. 3068.]

Monopoly and competition — Inadequate service — Change of ownership — Telephones.

An application of a telephone company to construct and operate a rural line in territory where there already existed a line from which the subscribers had discontinued their patronage because of inadequate service and rate misunderstandings, was refused when the new owner of the existing line announced the company's willingness to recondition the system and to render adequate service at reasonable rates.

[October 11, 1929.]

APPLICATION *of a telephone company for certificate of convenience and necessity to construct and operate a telephone line; denied without prejudice.*

By the COMMISSION: Hearing in the above entitled matter was had pursuant to due notice at Bowbells, North Dakota, on the 22nd day of June, 1929, at which time and place the following appearances were entered:

B. L. Wilson, Attorney of Bow-

bells, North Dakota, for the Clayton Farmers Telephone Company; W. A. Martin, District Manager, of Devils Lake, for the Dakota Public Service Company.

The petitioner, Clayton Farmers Telephone Company, petitions this Board for a certificate of public convenience and necessity to build, construct, and operate a farmers mutual telephone line in the county of Burke, state of North Dakota, as follows:

"Beginning at the Southeast (SE) corner of Section Thirteen (13), Foothills Township, to the Southeast (SE) corner of Section Fifteen (15) Ward Township; and from the Southeast (SE) corner of Section Fifteen (15), Clayton Township, one mile north, two miles east and one mile north to the Southeast (SE) corner of Section One (1), thence to Bowbells, North Dakota, over the Woburn Farmers Telephone Company's line.

"And from the Southeast (SE) corner of Section Sixteen (16), Clayton Township, two miles south and one mile west; and from the southeast (SE) corner of Section Seventeen (17), Clayton Township, one mile North. And from the Southeast (SE) corner of Section Thirteen (13), Clayton Township, two miles south and one-half mile west."

The petitioner has entered into a written agreement with the Woburn Farmers Telephone Company to use the poles of the latter company from the southeast corner of section one (1) in township one hundred sixty-one (161), range Ninety-one (91), Burke county, for the purpose of stringing a wire to connect with the city of Bowbells, and has entered into an agreement with the Bowbells Telephone Company for a physical connection of lines and switching at Bowbells.

The proposed line will parallel line No. 12 of the Dakota Public Service Company out of Bowbells excepting for about a mile and a half south of the point where the proposed line will join the pole line of the Woburn Farmers Telephone Company.

The sole question at issue in this case is, does public convenience and necessity require the construction and operation of the proposed paralleling line?

The history of line No. 12, as shown by the record, discloses a continued dissatisfaction on the part of the subscribers; first, in connection with business relations between them and the company that originally built the line in 1907; second, by reason of poor service; third and lastly, by reason of alleged high rates; and apparently a very strong prejudice against the line has been engendered thereby in the former subscribers.

So far as the service is concerned the record is clear on the proposition that there has been none worthy of the name for a long time. The record further discloses, however, that no complaint was ever made to this Board by the subscribers with respect to poor service that was being furnished.

In regard to high rates the record shows that the present rate for service on the line is $6.75 per quarter with a discount of 75 cents if paid on or before the 15th of the beginning of each quarter. This is the rate to which exception was taken by many of the subscribers.

The records of the Commission show that on the 28th day of February, 1928, the following petition was received by this Board:

"Dated this 14th day of February, 1928.

"We, the undersigned subscribers and users of telephone service rendered by the Exchange at Coteau, North Dakota, are dissatisfied with the grade of service we are getting.

"We are petitioning your Honorable Board for the purpose of getting a better grade of telephone service in our community. We feel the service as outlined below would be very satisfactory to us.

"First, We, as Town Subscribers, would like to be put on one line and connected with the switchboard at Bowbells, North Dakota, and are willing to pay the following rate for this service if established: $6.75 a quarter for residence phones and $8.25 a quarter for business phones, with the understanding that we are to receive a discount of 75 cents on both residence and business phones if paid in advance between the 1st and 15th day of each quarter.

"Second: We, as Rural Subscribers, want our lines connected direct with the Bowbells Exchange as by doing this we will be able to get 24-hour service, which is very essential, especially during the winter months. We feel that this will be an improvement over the present service, and voluntarily agree to pay $6.75 a quarter with a discount of 75 cents if paid on or before the 15th of the beginning of each quarter."

This petition was signed by approximately forty-five of the subscribers, among which were some of the witnesses who testified on behalf of the applicant in the hearing on this matter. Some of the witnesses testified that they signed the petition without reading it; others testified that they read the petition but did not see anything in it concerning an increase in rates; while others testified that they read the petition before signing it and are positive there was no reference to rates therein, and that if it did contain a provision for increased rates such provision must have been inserted after the same was signed. The very form of the petition, however, in the opinion of the Board, entirely negatives this last contention.

The matter of rates, however, is not involved in this proceeding and reference to them is made simply for the purpose of showing how the present rate was fixed. Upon receipt of this petition the Board authorized the change in the exchange service from Coteau to Bowbells as prayed for, and the rate mentioned was allowed to go into effect. It is, therefore, the present legal rate for service on the line.

Line No. 12 was acquired by the Dakota Public Service Company, the present owner, in the month of September, 1928. At that time there were only some fifteen or sixteen subscribers left on the line, the others for the reasons hereinbefore referred to having ordered their service discontinued. Dissatisfaction by reason of poor service and over the rates continued (without complaint to this Board) and by sometime in December, 1928, or within about three months following the purchase of the line by the Dakota Public Service

Company, all of the remaining subscribers had ordered their service discontinued, and up to the date of hearing none had been reconnected.

The district manager of the Dakota Public Service Company testified at the hearing that it was the desire of the company to give service on the line; that it would agree to give the best of service and would recondition the line; that the line could be re-established so that it would take care of all inhabitants desiring service; that the policy of the company in the matter of extensions is, where there are subscribers to warrant it, to make such extensions. It was also the testimony of the area manager of the company that the line could be put in shape to render efficient service within a very short time.

We, therefore, have the situation of a company already having a line in exactly the same territory proposed to be served by the applicant; that while the line is at present in bad order, it can be easily reconditioned so as to give efficient service; that the present owner of the line is ready, willing, and able to render such service.

While the present owner of the line is not, in the opinion of this Board, entirely without blame for the existing situation and, undoubtedly, did not proceed as promptly as it should have to put this line in shape at the time it became the owner thereof, yet the Board feels that the present owner has inherited some of the prejudices that existed against the former owners and the former service, and that, by reason of the short time elapsing between its purchase of the line and the withdrawal of the last subscribers, there may be some little excuse for its not putting its line in order, especially taking into account the season of the year during which these matters occurred; and the Board is of the opinion that with proper co-operation between the present owner of the line and the former subscribers, adequate and efficient telephone service can be rendered to the community.

As to the rates, that is a matter, of course, to be determined by this Board upon proper complaint or application, and, as has been said heretofore in these findings, is not an issue in this proceeding.

The Board is, therefore, of the opinion and finds, upon the record, that public convenience and necessity does not require the construction and operation of the telephone line proposed in the application; that said application should be in all things denied, without prejudice, to the filing of a new application in the event that the Dakota Public Service Company does not within a reasonable time recondition its said Line No. 12 and offer adequate and efficient telephone service to the community in which it is located; and

It is so *ordered.*

Re Illinois Bell Telephone Company

[No. 18830.]

Return — Amortization — Repairs to rental quarters.

1. The Commission refused to permit a telephone utility to amortize the expense of the repairs to rental quarters, including the installation of a new heating system, over the remaining life of the lease for the purposes of rate-making proceedings, where it was not shown that the company contemplated vacating such rental quarters at the expiration of the lease, p. 147.

Return — Percentage allowed — Telephones.

2. A proposed rate calculated to yield a return of approximately 8.4 per cent of the fair value of a telephone utility was held to be excessive and was modified so as to produce a return of approximately 6 per cent on the fair value of such property, p. 148.

[October 9, 1929.]

APPLICATION *of a telephone company for increased rates; proposed rates modified.*

By the COMMISSION: On November 21, 1928, the Illinois Bell Telephone Company filed with the Commission rate schedule Ill. C. C. 3 in which it was proposed that rates for telephone service in Edwardsville, county of Madison, be advanced, and in which it was further proposed that such advanced rates become effective on December 21, 1928. It having appeared from an examination of the said schedule that a hearing should be held concerning the reasonableness of the proposed rates the Commission, on December 13, 1928, suspended the said rates and subsequently resuspended the same until October 10, 1929.

The present and proposed rates for the principal classes of service are as follows:

Class of Service	No. of Stations	Net Monthly Rates Present	Proposed
Individual line business	243	$4.50	$6.00
Two party line business	100	4.00	5.00
Business extension	90	1.25	1.25
Individual line residence	190	2.50	3.00
Two party line residence	1,120	2.00	2.50
Four party line residence	—	—	2.25
Residence extension	70	.60	.75
Rural multi-party business	10	2.50	3.00
Rural multi-party residence	315	2.00	2.25

All interested parties having been notified, the matter came on for hearing before the Commission at Springfield, Illinois, on June 20, 1929, Sep-

tember 4, 1929, and September 17, 1929 at which hearings the petitioner, the Illinois Bell Telephone Company, was represented by counsel, and the city of Edwardsville, the Edwardsville Chamber of Commerce, the Edwardsville Citizens Advisory Board, and certain rural subscribers in the rural district entered appearances as objectors to the proposed increase in rates.

At the initial hearing on June 20, 1929, the Illinois Bell Telephone Company submitted as evidence of record an inventory and appraisal of the Edwardsville exchange property as of November 1, 1928, which appraisal shows the present day reproduction cost of the exchange physical property including material and supplies to be $204,530, and the depreciated cost as of the same date $158,579. To these figures representing physical property the petitioner has added $6,000 for working capital and has also added going value in the amount of $20,210, making the total cost new of the exchange property, as of November 1st, $230,740, and the depreciated cost $184,789.

At the time the evidence was presented by the company the petitioner had under way an extensive construction program in the city of Edwardsville which it was estimated would result in gross additions in the amount of $122,117, and that the cost new of the property to be retired by the present reconstruction program would be $52,260 and the depreciated cost $37,414. The company, therefore, estimated that the total cost of the exchange property as of January 1, 1930, including material and supplies, working capital, and going value would be $300,597 new and $269,492 depreciated.

The petitioner also submitted as evidence of record a statement showing the annual operating revenues and expenses of the company for the period ending December 31, 1928, and also an estimate of revenues and expenses based on the operation of the reconstructed plant as it will exist on January 1, 1930. The company's evidence shows that the net annual operating revenues of the company including toll, miscellaneous, and non-operating revenues for the year 1928 amounted to $72,297; that the net operating expenses exclusive of depreciation for the same period were $50,716, taxes, uncollectible revenue, and rent deductions amounted to $4,433, thus leaving available for depreciation and return on investment $17,148. Depreciation actually set aside during the year 1928 with respect to the Edwardsville exchange amounted to $9,601, thus resulting in a balance net income of $7,547.

The company presented an estimate of probable revenues under the increased rates based on the number of stations which it expects will be connected to the exchange as of December 31, 1929. This estimate including toll, miscellaneous, and non-operating revenues is $90,943. The operating expenses less depreciation, as estimated by the company, will amount to $55,325. Taxes, uncollectible revenue and rents will amount to $6,700 leaving available for depreciation and return on investment $28,918. The company also estimates the annual accruing depreciation in the property will be $12,297 and the

balance net income will amount to $16,621 or 6.17 per cent on the depreciated cost of the property claimed by the petitioner.

At the conclusion of the hearing on June 20, 1929, the case was continued for investigation by the engineering and accounting staffs of the Commission and was heard on September 4, 1929, for the purpose of receiving reports containing the results of such investigations, and on September 17, 1929, for the purpose of cross examining the witnesses in connection therewith.

The accounting section of the Commission submitted a detailed report containing the results of an audit of the books and records of the Illinois Bell Telephone Company with respect to the Edwardsville exchange, Illinois Division, and the entire company. This report contained complete analysis of the capital accounts, operating accounts, depreciation reserve, and covered practically all the phases of the operations of the company as disclosed by its books. The operating revenues and operating expenses for the year 1928, as shown by this report, are practically the same as shown by the company in the evidence presented at the former hearing, practically the only difference being in the amount set aside for depreciation and in the taxes and uncollectible revenue which makes the balance net income as shown by the accountants' report $7,473 as against $7,547 as shown by the company.

The engineering staff of the Commission made an inventory and appraisal of the Edwardsville property and submitted the same as evidence of record herein. The record shows that at the time of the investigation by the engineering staff the reconstruction work at Edwardsville had been substantially completed, that is, more than 90 per cent of the property which is being installed under the present construction estimate was in place and there remained only a comparatively small amount of work to be done to put this property in service. After checking the estimates against the property actually in place it was apparent that the work had been done according to the plans and specifications and an allowance was made by the engineering staff in its inventory for the completion of the estimate now under construction. The reproduction cost new of the property as it will be on December 31, 1929, including material and supplies, is estimated by the engineering staff to be $248,027. Depreciated cost of the property as of the same date is $220,283. These figures included physical property only and no allowance has been included therein for working capital or going value.

The engineering staff also made a study of the probable revenues, expenses, and net income both under the present and proposed rates. For the purpose of compiling the estimate of net income under the present rate the engineering staff has estimated the number of stations as they probably will exist on December 31, 1929, and to this number of stations has applied the present rates in effect in the Edwardsville exchange. To this has been added toll and miscellaneous revenues and by this method the total revenues including nonoperating revenues are estimated to be $74,159. The operating expenses exclusive of de-

preciation will be $49,438. Taxes, uncollectible revenue, and rents amount to $5,111, thus leaving available for depreciation and return on investment under the proposed rates $19,610. By applying the proposed rates to the probable number of stations in service as of December 31, 1929, and including all other items of revenue, the engineering staff estimates the total revenues under the proposed rates will be $89,292; the operating expenses exclusive of depreciation, it is estimated, will be $49,438; and taxes, uncollectible revenue, and rents $6,927, leaving $32,927 available for depreciation and return on investment.

For the purpose of determining the annual accruing depreciation in the property the engineering staff prepared an exhibit setting forth the original cost of each item of depreciable property, the net salvage and the average life of the property, and from this data computed the amount necessary to set aside annually for accruing depreciation in the property to be $11,373. Deducting this amount from $19,610, the amount available for depreciation and return on the present rates, leaves a balance net income of $8,237 and by deducting the annual depreciation requirement from $32,927, the amount available for depreciation and return, under the proposed rates, leaves a balance net income of $21,554, or 3.7 per cent on the depreciated cost of the physical property under the present rates, and 9.8 per cent under the proposed rates.

For the purpose of comparison Table I has been compiled summarizing the evidence of record regarding operating revenues, operating expenses, and probable net income under the present and proposed rates.

Table I.

Summary of Evidence—Operating Revenues, Expenses and Net Income.

	Actual for 1928		Estimated for new plant. Revenue based on probable stations as of Dec. 31, 1929.		
			Present Rates	Proposed Rates	
	Company (a)	Commission (b)	Commission (c)	Company (d)	Commission (e)
Operating revenues	$72,284	$72,284	$74,146	$90,930	$89,279
Operating expenses (less depreciation)	50,716	50,716	49,438	55,325	49,438
Net operating revenues	21,568	21,568	24,708	35,605	39,841
Taxes and uncollectible revenues	3,008	3,093	3,349	4,900	5,165
Operating income (less depreciation)	18,560	18,475	21,359	30,705	34,676
Non-operating revenue	13	86	13	13	13
Gross income (before depreciation)	18,573	18,561	21,372	30,718	34,689
Rents	1,425	1,431	1,762	1,800	1,762
Available for depreciation and return	17,148	17,130	19,610	28,918	32,927
Depreciation	9,601	9,657	11,373	12,297	11,373
Balance net income	7,547	7,473	8,237	16,621	21,554
Operating return on $250,000	3.	3.	3.3	6.6	8.6

For the purpose of comparison it is necessary to add to both the operating revenues and operating expenses shown in columns c and e of Table I the amount of $2,025 which represents revenue received for the switching of through toll calls, that is, messages switched at Mt. Vernon but neither originating nor terminating on the Mt. Vernon exchange. The

company by its present accounting methods regards the amount so received as operating revenue and the expense of handling these calls is regarded as operating expense and included in the traffic expenses of the petitioner. The engineering staff of the Commission has regarded the revenue received for switching of through tolls as a credit to operating expenses and, therefore, this transaction shows neither in the operating expenses nor operating revenues in columns c and e. The net operating revenues are not affected by the method of handling this item nor is the balance net income as shown in Table I affected thereby.

The evidence of record shows that the subscribers' station revenue under the proposed rates as estimated by the company is somewhat in excess of that estimated by the engineering staff of the Commission due to the fact that the company, in making its estimate, considered that some of the subscribers will avail themselves of the new four-party rate which it proposes to make effective in the future and in making its estimate it has taken into consideration this regrading of the subscribers. There is also a difference of opinion between the witnesses for the company and those for the Commission in regard to the probable operating expenses less depreciation. This difference amounts to approximately $4,000 per annum and the principal difference appears to be in connection with maintenance expense. The company has included 70 cents per station or approximately $1,550 per year in addition to the normal maintenance expense for what it terms associated maintenance or work which it proposes to do in connection with the present reconstruction program and which it estimates will amount to $7,700. The company contends this amount should be amortized over a 5-year period and this accounts for part of the difference. This item of expense, the engineering staff of the Commission contends, is provided for in its allowance for depreciation reserve and no amortization of such expense has been made by the engineering staff.

The normal maintenance estimated by the company for the future is $2.10 per station, whereas, the engineering staff estimates the normal maintenance on the Edwardsville plant at $1.39 per station, thus accounting for another difference of 71 cents per station or approximately $1,570.

[1] Another item of expense included by the company but not included by the engineering staff of the Commission is the cost of repairs to rental quarters including the installation of a new heating system, the total amount of which is $3,500 and which the company contends should be amortized over the remaining life of the lease at the rate of $580 per year. As a matter of accounting this is the correct procedure but for the purpose of fixing rates it appears that only the depreciation on this property should be included and given consideration unless there is some evidence to lead the Commission to believe that the company contemplates vacating its present rented quarters at the expiration of the lease. The record contains no evidence to this effect. Other differences appear in the probable cost of operation but the

principal points contested by the company have hereinabove been pointed out.

The Commission having carefully considered the evidence of record herein is of the opinion and finds:

1. That the fair value of the property of the Illinois Bell Telephone Company, used and useful in furnishing telephone service in Edwardsville and vicinity, including all elements of value, tangible and intangible, as of December 31, 1929, is $250,000.

2. That a reasonable allowance as an item of operating expense to provide a reserve for depreciation of plant and equipment is $11,373.

3. That the total annual operating revenues for the year 1928 were $72,297 and that the total annual operating expenses including uncollectible revenue, taxes, rents, and depreciation actually set aside by the company during the year 1928 amounted to $64,750, thus resulting in a net income of $7,547, which is 3 per cent on the fair value of the property hereinabove found.

[2] 4. That the annual operating revenues under the proposed rates based on the stations in service as of December 31, 1929, will be approximately $89,000 and that the total annual operating expense including uncollectible revenue, taxes, rents, and $11,373 for depreciation will amount to $68,000, thus leaving available for interest and return on investment $21,000, which is 8.4 per cent on the fair value of the property hereinabove found.

5. That the proposed rates produce an excessive return on the fair value of the property and should be canceled and annulled.

6. That the modified schedule of rates hereinafter authorized will produce a return of approximately 6 per cent on the fair value of the property and are just and reasonable rates and should be authorized.

MARYLAND PUBLIC SERVICE COMMISSION

Re Consolidated Gas Electric Light & Power Company of Baltimore

[Case No. 1915, Order No. 14956.]

Return — Percentage allowed — Electric utility.

1. Rates calculated to yield a return of approximately 8.17 per cent were modified so as to produce a return of not less than 7 and not more than 8 per cent, p. 150.

Apportionment — Electric rates — Domestic and residential consumers.

2. A reduction of rates previously calculated to have yielded a return in excess of 8 per cent was so apportioned as to give a greater benefit to

residential and commercial consumers where it was shown that the industrial patronage produced less than 6 per cent return and where it was shown also that the former patronage combined had produced 53.4 per cent of all revenue, p. 150.

Apportionment — Electric rates — Primary and secondary rates.

3. A reduction of electrical rates to residential and commercial consumers was so apportioned as to give greater benefit to those patrons attaining the secondary rates where it was shown that consumers using only an amount within the primary rate did not seem to be bearing their proportionate share of the burden, p. 150.

[October 9, 1929.]

INVESTIGATION *by the Commission on its own motion into the rates, rules, and practices of a gas and electric company; rates adjusted.*

APPEARANCES: Thomas J. Tingley, People's Counsel; J. Wallace Bryan, of Counsel for Industrial Power Consumers' Association; Charles Markell, of Counsel for the Company.

By the COMMISSION: The Commission's Order No. 10634 (1926) XVII Ann. Rep. Md. P. S. C. 237 (anno.) P.U.R.1927E, 381, 803, which became effective on January 1, 1927, prescribed rates and charges which this company should charge for gas and electric service during the period terminating at midnight of June 30, 1929, with the provision that should a proceeding concerning the rates and charges of the company be pending before the Commission at the said terminating date, the order should continue in effect for a further period of six months, unless the said pending proceeding should be concluded in the meantime.

The company was also required to submit to the Commission quarterly reports of revenues and expenses during the period that the order was in effect, and a study of these reports led the Commission to believe that by June 30, 1929, the company would be earning a return in excess of 8 per cent and that the rate of return would steadily increase under the rates established by said order.

A thorough investigation by the Commission's engineering and accounting staffs was, therefore, ordered and the matter was set for public hearing on Monday, May 27, 1929.

The hearing which was begun on May 27th, was continued through the following day and was then adjourned until June 13th, to permit counsel for Industrial Power Consumers' Association to prepare his case. The taking of testimony was concluded on June 14th, and argument of counsel was heard on June 25th.

The stenographic record occupies 740 pages; people's counsel submitted 9 exhibits; the company submitted 19 exhibits and 39 were submitted in behalf of the Industrial Power Consumers' Association, making a total of 72 exhibits, in the form of tabulations, presented for the purpose of giving

the Commission comprehensive information as to the company's revenues, expenses, and income resulting from its gas and electric service.

People's counsel exhibits, prepared by the Commission's staff, showed the rate base at December 31, 1928, to be $111,345,046, including the book cost ($761,365) of the Havre de Grace and Aberdeen properties acquired in 1928 from the Northern Maryland Power Company. This rate base was obtained by applying the value of net additions to the value determined by the Commission as of December 31, 1922, namely, $81,400,000. It was pointed out by Chief Engineer Wolf that the inclusion of the Havre de Grace and Aberdeen properties, of which the Commission has not determined the fair value for rate-making purposes, had the effect of reducing the rate of return earned by the company in 1928 to the extent of one-hundredth (0.01) of 1 per cent.

A more considerable effect upon the rate of return for 1928 was produced by the contention of the United Railways & Electric Company that a reasonable interpretation of its contract entitled it to service at the average rate of 0.936 cent per kilowatt hour instead of a 1-cent rate as billed. The Commission's chief engineer, Mr. Wolf, endorsed the Railways Company's interpretation of the contract and Mr. Wagner, president of the Consolidated Company, stated that the Railways Company had paid at the rate of 0.936 cent per kilowatt hour in 1927 and 1928 and would be billed at that rate in 1929. (Record, p. 145). Mr. Wolf showed that the company had earned a rate of return of 8.04 per cent in 1928, if revenue from the United Railways company were included at the rate of 1 cent per kilowatt hour, or had earned 7.98 per cent if receipts from the Railways Company were based upon the rate of 0.936 cent per kilowatt hour.

Mr. Wolf estimated that $4,580,000 would be added to the rate base in 1929 and that the average value of property used and useful in the public service during 1929 would be $113,635,046. This includes $2,100,000 for the Lexington Building, which amount is the actual cost of erecting the building in 1916.

[1–3] The rate of return from the combined gas and electric services, in 1929, considering revenue from the United Railways Company at the rate of 0.936 cent per kilowatt hour, was estimated to be 8.17 per cent.

People's counsel Exhibit No. 3 was submitted in support of counsel's contention that the rate of return earned by the company had recovered rapidly after rate reductions, due, in large measure, to a stimulation of business by reason of the lower rates. The exhibit showed that after a rate reduction, effective July 1, 1923, the company earned 7.74 per cent in 1924, and 8.61 per cent in 1925; that in spite of a voluntary rate reduction by the company, effective December 1, 1925, a return of 8.15 per cent was earned in 1926, and following a further reduction by the Commission, effective January 1, 1927, the return earned in 1927 was at the rate of 7.51 per cent.

People's counsel Exhibit No. 9 showed the amount of revenue derived in 1918 and in 1928 from different classes of customers. In 1928, the residential and commercial (A

and B) schedules combined produced 53.4 per cent of all revenue. The "S" industrial schedules produced 8.1 per cent and the "T" industrial schedules, 18.6 per cent.

With respect to the "retirement reserve," company's exhibit No. 1 showed that the reserve had increased by the amount of $1,629,605.36 between December 31, 1922, and December 31, 1928, but the ratio which the reserve bore to the total value of the company's property had decreased from 5.82 per cent to 5.63 per cent in the same period. Mr. Wagner, president of the company, expressed the opinion that the amount in the reserve should increase as the value of the property increased and recalled that the Commission had intimated in its 1923 opinion that the ratio which the reserve bore to the value of the property should not exceed 10 per cent.

Mr. Wagner further testified that no complaints had been made to the company that rates were too high. He expressed the belief that the company's industrial rates were as low as in other cities, with but few exceptions, and where exceptions existed, labor or fuel costs were less or conditions of service, methods of determining demand and computing rates were different. He stated that the company had made numerous comparisons of rates in other cities in the past few years in connection with negotiations with large prospective users of power and that all the comparisons had been favorable to Baltimore. Company's Exhibit No. 3 was submitted to show that the kilowatt hour consumption per customer, under the "T" schedule, had decreased from 3,884,928 in 1923 to 2,732,851 in 1928; but that the average rate per kilowatt hour had in the same period decreased from 1.501 cents to 1.316 cents. It was pointed out that the two factors which affect the cost of supplying service are consumption per customer and load factor, both of which had changed adversely in the class of customers being served under the "T" schedule. It was testified that the rate of return earned from schedule "T" customers was less than 6 per cent. (Record, p. 152), and the company later submitted a study showing that the rate earned on the schedule "T"-13,200 V. service in 1928 was actually 5.77 per cent. The elements of property investment upon which this rate estimate was based were 30 per cent of power stations, 9.21 per cent of substations, 47.24 per cent of transmission system, 0.45 per cent of meter investment, and 20.01 per cent of working capital. The summation of these items amounted to 17.22 per cent of the total property value.

The elements of operating expenses charged to this service were 28.19 per cent of production and transmission costs, 29.69 per cent of cost of attaching new business, 17.05 per cent of general expense, 17.96 per cent of Taxes, and 18.10 per cent of Retirement Expense. The summation of these items amounted to 20.01 per cent of total operating expense of system.

Company's Exhibit No. 4 showed that 58.9 per cent of the current sold to residential customers under schedule "B" in 1928 was sold at the secondary rate and the corresponding ratio for commercial customers was 42.0 per cent.

Exhibit No. 5 showed that the average revenue in January, 1928, from all residential customers who paid at the primary rate only, was $1.04 per month, and that revenue from customers who used some current at the secondary rate, averaged $3.74 per month.

Mr. Wagner testified that the fixed costs of serving a domestic consumer, without allowing anything for current or for any return on the investment, is about $1.11 per month; that if the average amount of current used by such customer be included at actual production cost, the cost of serving each customer is $1.20; and he estimated that 10 cents should be added for each 1 per cent of return allowed on the investment. The conclusion drawn was that the users of primary current only are not now paying enough for the service they receive and that those who use considerable quantities of current at the secondary rate are paying relatively too much, and that if any reduction were made in the "B" schedule rates, it should not apply to the primary rate.

The Commission has given careful study and consideration to the testimony and exhibits and has reached the conclusion that the company's rate schedules should be so modified as to effect a reduction of approximately $1,300,000 in annual gross revenue, after which reduction there will remain to the Company a rate of return of not less than 7 per cent and not more than 8 per cent.

The Commission has further determined that the major part of this reduction should be applied to the domestic and commercial electric (A and B) schedules; that a reduction should be made in the primary and secondary energy rates of the "S" industrial schedules such as will preserve a proper relationship with the "B" schedules; that the primary rating of gas schedule "C" should be reduced to 100 hours use of the demand; that the primary rating under gas schedule "D" should be fixed at 4,000 cubic feet per month instead of varying with the number of rooms, as at present, and that a tertiary rate of 55 cents net, per one thousand cubic feet, should be added to this schedule for all consumption in excess of 24,000 cubic feet per month.

Part of the saving to domestic and commercial electric customers will be in the form of a 4 per cent discount of monthly bills, when payment is made promptly.

The Commission is of the opinion that no reduction in electric schedule "T" rates should be made at this time. This conclusion is reached after deliberate consideration of all the exhibits and testimony bearing upon the industrial service and of the very able and persuasive arguments of counsel for the Industrial Power Consumers' Association. The Commission is confident that no data were omitted by counsel which might have altered its opinion and that the case for the schedule "T" customers was very thoroughly and completely presented.

Some doubt exists as to the reasonableness of the amount of the annual retirement allowance which the company is now charging to operating expense. This allowance is comprised of 1 per cent of the total value of gas property and 2½ per cent of the total value of electric property.

It is felt that no reduction should be made in the allowance at this time, but that future charges to "retirement expense" and the condition of the retirement reserve account should be subjected to close scrutiny by the Commission's auditors until the reasonable basis for annual retirement allowance has been conclusively determined.

It is gratifying to note that the recent reports of the company's revenues and expenses indicate that the net income available for return in 1929 will substantially exceed the estimate made by Mr. Wolf, and this prospect has been given due weight in determining the amount of the reduction in annual revenue which it is reasonable to make in this case.

An order will be passed in conformity with this opinion and the company will be directed to submit for approval revised schedules of rates and charges for electric and gas service in which shall be incorporated the following specific changes:

Description of Change	Reduction in Gross Revenue Based on 1929 Estimate
Electric:	
(a) (Applicable to city district only) Reduce residential and commercial secondary rate under schedule B from 4 cents to 3.5 cents per kw. hr. ...	$465,000.00
(b) Limit schedule B commercial secondary rating to eight times primary rating, but not to exceed 800 kw. hrs. less primary	10,000.00
(c) Fix schedule B residential primary rating at 25 kw. hrs. and secondary rating at 200 kw. hrs. (for all residence and farm demands up to 7½ kw.)	25,000.00
(d) Reduce schedule S primary rate from 3.9 cents to 3.5 cents per kw. hr. and secondary rate from 2.4 cents to 2.0 cents	70,000.00
(e) Allow 4 per cent discount on all bills under schedules A and B if paid in ten days (except bills for minimum charge)	390,000.00
Gas:	
(f) Limit commercial schedule C primary rating to 100 hours use of demand	55,000.00
(g) Provide, in residential schedule D, a tertiary rate of 55 cents, per 1,000 cubic feet, for excess over 24,000 cubic feet	90,000.00
(h) Fix residential schedule D primary rating at 4,000 cubic feet	195,000.00
Estimated total reduction in annual gross revenue	$1,300,000.00

NEBRASKA STATE RAILWAY COMMISSION

Re Lincoln Telephone & Telegraph Company

[Application No. 7841.]

***Valuation** — Market value — Rate making.*

1. Evidence as to the market value of a utility's property as a whole is improper as a measure of the fair value of such property for rate-making purposes, p. 156.

Valuation — Rate making — Value for taxation.

2. The assessed value for taxation of utility property is inadmissible as evidence of the fair value of such property for rate-making purposes, p. 156.

Return — Operating expenses — Diminishing patronage — Rate increase.

3. A telephone utility's estimate of diminishing patronage likely to accrue from a rate increase for two-party service was reduced by the Commission where experience showed that a change from higher to lower grade service was in most instances only temporary, p. 156.

Depreciation — Percentage allowed — Telephone utility.

4. An annual allowance for depreciation of 6 per cent on the cost of telephone properties was reduced to 5½ per cent computed on the book cost thereof where the properties included real estate and buildings not subject to rapid deterioration, p. 156.

[September 26, 1929.]

APPLICATION *of telephone utility for increased rates; granted.*

APPEARANCES: John H. Agee, General Manager, and T. C. Woods, Attorney, for the applicant; Charles H. Slama, Attorney, H. A. Bryant, Attorney, Clyde Worrall, Secretary Chamber of Commerce, and H. Emerson Kokjer, for the city of Wahoo; B. E. Forbes, Chief Engineer, and Hugh LaMaster, Attorney, for the Commission.

Commissioner RANDALL presiding.

By the COMMISSION: This is an application of the Lincoln Telephone & Telegraph Company for authority to increase its telephone exchange rates at Wahoo, Nebraska. The matter came on to be heard in the court house at Wahoo on July 25 and 31, 1929. The present monthly rates for exchange service and those proposed in the application are as follows: Rates for special service and equipment will remain the same.

Class of Service	Present Monthly Rate	Proposed Monthly Rate
Business—one-party	$3.75	$4.25
One-way business	1.75	2.00
Residence—one-party	1.75	2.25
Residence—one-party Emp.	1.25	1.75
Residence—two-party	1.50	1.75
Residence—two-party and mileage	2.00	2.25
Residence—two-party Emp.	1.00	1.25
Residence—ten-party	1.50	1.75
Business—ten-party	2.00	2.25
Residence—ten-party and mileage	3.16	3.41

Petitioner offered in evidence the book value of the exchange property as of April 30, 1929, in the sum of $135,221.74. This amount was spread over the various classes of property in proportion to the investment in each division. Applicant also represented that it will expend $8,506 additional in the near future to pay the cost of completing metallic serv-

ice for all of the rural subscribers. This results in a total book figure of $143,727.74.

The book value originated from an appraisal of the competing exchanges which were serving Wahoo, and were consolidated in the year 1912. Since that time new property has been added to the exchange and included in the book value at cost. Also, an amount has been included through replacement of existing plant which resulted from an increase in price levels of the equipment, labor, and materials which were substituted for the property removed, as compared with the estimated cost of the property displaced. The cost of telephone equipment, material, and labor has increased rapidly since 1916 and is now approximately 50 per cent higher than at the time of consolidation. In other words, the book value started from an appraisal in a period of so-called normal price levels, and has been continued on the investment basis to date.

On January 1, 1913, the book figure was $60,587 and on December 31, 1928, it has become $134,864, or an increase of more than 100 per cent, by reason of property added and replaced. During the same period the realized depreciation or cost of plant removed from service, was $52,537 and the credits to the depreciation reserve on account of the Wahoo Exchange were $76,117. The difference may be regarded as a measure of the accrued depreciation in the property since 1913.

Petitioner also offered an appraisal of the physical property in the exchange in the sum of $161,255 reproduction value new, and the same less deterioration in the amount of $142,352. These figures do not include the additions and betterments in the sum of $6,110, nor going concern value computed on the basis of 10 per cent of the cost new in the sum of $16,123. The value new is computed on an actual count or measurement of the various classes of plant to which material, equipment, and labor costs have been applied as of June 1, 1929. Working capital was estimated at $5 per telephone as a measure of the necessary amount of money, materials, and equipment to operate the exchange. The estimated cost new, less deterioration, is intended to show the loss in the value of the property which could be determined by inspection. The testimony is clear on the point that deterioration as used here does not include all the factors of depreciation, such as inadequacy and obsolescence, or accrued depreciation, which are not disclosed by observation.

The Commission will use 80 per cent of the estimated cost of the plant new, or $129,004 in order to allow for the factors of depreciation not included in applicant's definition of deterioration. This percentage is used for the reason that it is a fair measure of depreciation when the physical property is in a good operating condition. Applicant's estimate of working capital is arbitrary and does not give credit for the cash advanced by subscribers for service. However, cash working capital does not include stores and supplies, nor the equipment necessary to be held in reserve. It has been estimated at 10 to 15 per cent of the operating expenses which is somewhat less than

the company's appraisal. The courts and Commissions have held that going concern is an element of value in an operated property, however, we will not discuss it here, as it appears to exceed the requirements of this case.

[1] In summarizing we have the book figure giving effect to the proposed additions and betterments in the sum of $143,727. Also the appraisal value of the property less depreciation as fixed by the Commission, plus the above additions in the sum of $137,510. The protestants sought to develop the price paid for the properties in 1913. This would be immaterial and irrelevant for the reason that it does not include all the property at this time, and for the further fact that market values have been rejected by the courts and Commissions as a measure of fair value of public utility properties for rate-making purposes. This must be true, as the greater the earnings the higher the market value, and as the earnings grow smaller the value will be correspondingly reduced.

[2] The assessed value for taxation has also been discarded as admissible evidence in rate cases, as shown by the following:

"Even if the assessed values were admissible they would not furnish a safe guide either as to land or buildings, and that is especially true as to buildings, because too many elements enter into an assessment for real estate taxation which have no place in the determination of the value of real estate, either in the case of private sale, condemnation, or confiscation." Brooklyn Union Gas Co. v. Prendergast (1925) 7 F. (2d) 628, 669, P.U.R.1926A, 412, 498.

[3] Revenues and expenses for the year ended December 31, 1928, were $29,486.15 and $28,307.44, leaving a net profit of $1,178.71. Under the proposed rate schedule the revenues become $34,519 and expenses $29,179.56, providing a return on the value of the property used and useful for exchange purposes of $5,340. In a general way the estimated operating expenses under the proposed schedule were taken from averages of the actual expenses for the preceding four years, however, the company estimated that 108 one-party residence subscribers will change to two-party service under the new rates, causing a loss of $6 per station annually, or $648. The Commission will take 50 per cent of this figure or $324 with the thought that many of the subscribers will return to the single party service. This is done, having in mind also, that there is no allowance in the company's anticipated revenues for an increase in the number of revenue stations, although the exchange has grown slowly, but steadily for a number of years.

[4] Expenses show that applicant included 6 per cent computed on the total cost of the property as a basis for its annual credit to the depreciation reserve. This exchange includes real estate and an office building, which do not depreciate in the same ratio as the remainder of the fixed property. The Commission has said that 5½ per cent computed on the book value of the property is reasonable where the company owns real estate and exchange buildings,

therefore, the sum of $8,623 as proposed by applicant for depreciation will be reduced to $7,905 and the exchange revenues will be increased in the sum of $324 for the reasons stated above. Giving effect to those changes the estimated net annual earnings will be increased from $5,340 to $6,382, or 4.4 per cent on book cost. Certainly a schedule of rates that does not produce a return in excess of this percentage on the book cost, is not unreasonable to the ratepayers.

Under these conditions the Commission will not find a value of the property as it believes and so finds that the proposed rates are reasonably required for the purposes of the corporation.

CALIFORNIA RAILROAD COMMISSION

Re Southern California Gas Company et al.

[Decision No. 21560, Application Nos. 15854, 15855.]

Consolidation, merger, and sale — Transfer of rights — Franchises.

The transfer of properties, including franchises whose holders have been authorized to exercise the rights and privileges granted by them, carries with it to the purchaser authority to exercise such rights and privileges.

[September 14, 1929.]

APPLICATION *by one utility for authority to transfer property to another; granted.*

APPEARANCE: A. E. Peat, for applicants.

By the COMMISSION: In the above entitled proceedings the Railroad Commission is asked to make its order authorizing the sale by Producers Gas & Fuel Company and Southwestern Gas & Fuel Company of all of their properties to Southern California Gas Company and the execution and delivery of the necessary deeds, conveyances, assignments, and instruments of transfer to effect said sales; authorizing Southern California Gas Company to purchase said properties; and determining that public convenience and necessity require the exercise by Southern California Gas Company of each and all of the franchises to be conveyed to it by Producers Gas & Fuel Company and Southwestern Gas & Fuel Company.

The three corporations, applicants in these proceedings, are engaged in the business of furnishing and supplying natural gas for domestic, commercial and industrial purposes in the southern part of the state. At the close of 1928, according to the 1928 annual reports of the companies to

this Commission, Southern California Gas Company served 201,952 consumers in the counties of Los Angeles, San Bernardino, Riverside, Kern, Kings, and Tulare, and elsewhere; Producers Gas & Fuel Company 98 consumers in and about McKittrick, in Kern county, and Southwestern Gas & Fuel Company 1,300 consumers in and about Beaumont, Banning, Hemet, and San Jacinto, in Riverside county. The properties of Producers Gas & Fuel Company and Southwestern Gas & Fuel Company are adjacent to those of Southern California Gas Company, and both companies receive all, or substantially all of the gas they sell from Southern California Gas Company, the systems being interconnected.

It appears that the three corporations are controlled through stock ownership by the same interests and that it is believed by those in control that the operations and accounting can be carried on more advantageously if the three systems are operated as one than when operated separately, and that public convenience will be better served by such consolidated operations. Arrangements have, therefore, been made for the transfer of the properties as herein proposed.

The applications show that Southern California Gas Company proposes to pay for the properties of Producers Gas & Fuel Company the sum of $94,523.67 in cash and assume its outstanding liabilities, which, as of June 30, 1929, aggregated $13,239.51, and to pay for the properties of Southwestern Gas & Fuel Company the sum of $151,598.15 in cash and assume its outstanding liabilities $101,208.59 and reserves of $19,310.06. The liabilities and reserves are also as of June 30, 1929.

The original cost of the properties of Producers Gas & Fuel Company, as of June 30, 1929, is reported at $107,763.18, an amount equal to the proposed cash payment and the liabilities to be assumed, and the original cost of the Southwestern Gas & Fuel Company, as of the same date, at $246,565.79, an amount $25,551.01 less than the cash payment and the liabilities and reserves to be taken over by the purchaser. The purchase price of the Producers Gas & Fuel Company's properties is based, it appears, on the book costs of such properties, while the price for the Southwestern Gas & Fuel Company's properties is based on the amount paid by the present holder of that company's stock, Pacific Lighting Corporation, in acquiring such stock and in retiring the company's bonds.

It appears that the credit balance in the reserve for accrued depreciation account of Producers Gas & Fuel Company, as of June 30, 1929, amounted to about $50,000 and of Southwestern Gas & Fuel Company to about $18,400. In this connection, however, Mr. A. E. Peat testified that, in his opinion, the proper balance in the reserve for accrued depreciation account of Producers Gas & Fuel Company should be reduced to about $25,000. In a statement filed subsequent to the hearing, Mr. Peat advised us that, in his opinion, the proper balance in the reserve should be $28,898.53. We believe that in purchasing the properties of these two companies, Southern California Gas Company should transfer to its books of accounts the cost of the properties

as shown on the books of the vendor companies. In the event the purchaser pays for the properties more than the reported original cost of the properties less the liabilities assumed and appropriate reserve for accrued depreciation, it must charge such excess to its corporate surplus account.

Included in the properties of the two companies to be transferred to Southern California Gas Company are the following franchises:

Producers Gas and Fuel Company.

Ordinance No. 120, passed by the board of supervisors of the county of Kern on April 6, 1917.

Ordinance No. 35, passed by the board of trustees of the city of McKittrick on April 3, 1917.

Southwestern Gas and Fuel Company.

Ordinance No. 109, passed by the board of trustees of the city of Banning on January 13, 1920.

Ordinance No. 73, passed by the board of trustees of the city of Beaumont on December 12, 1919.

Ordinance No. 148A, passed by the city council of the city of Hemet on September 19, 1927.

Ordinance No. 157, passed by the city council of the city of San Jacinto on September 6, 1927.

Ordinance No. 174, passed by the board of supervisors of the county of Riverside on September 6, 1927.

Southern California Gas Company asks for an order declaring that public convenience and necessity require the exercise by it of the rights and privileges granted by such franchises. The Commission heretofore by Decision No. 4772, dated October 20, 1917, made its order declaring that public convenience and necessity required the exercise by Producers Gas & Fuel Company of the rights and privileges granted by Ordinance No. 120 of the county of Kern and Ordinance No. 35 of the city of McKittrick, and by Decision No. 7825, dated July 8, 1920, that public convenience and necessity required the exercise by Twin Cities Gas Company, the predecessor of Southwestern Gas & Fuel Company, of the rights and privileges granted by Ordinance No. 109 of the city of Banning and Ordinance No. 73 of the city of Beaumont. We do not believe it necessary to again make a finding that public convenience and necessity require the exercise of the rights and privileges granted by these four ordinances. The transfer of properties, including franchises whose holders heretofore have been authorized to exercise the rights and privileges granted by them, carries with it to the purchaser authority to exercise such rights and privileges.

It appears, however, that the Commission has never made its order of public convenience and necessity with respect to the franchises held by Southwestern Gas & Fuel Company which were granted by the cities of Hemet and San Jacinto and the county of Riverside. Copies of the ordinances granting such franchises have been filed herein. The order herein will authorize the purchaser to exercise the rights and privileges granted by these franchises.

It appears to us that public convenience and necessity will be served by the transfer of the properties referred to herein to Southern California Gas Company, and the order herein accordingly will so provide.

MISSOURI SUPREME COURT, DIVISION NO. 1.

State ex Rel. Lohman & Farmers Mutual Telephone Company

v.

Brown et al. Public Service Commission

[No. 29496.]

[— Mo. —, 19 S. W. (2d) 1048.]

Public utility — Mutual telephone company.

1. A mutual telephone company serving the owners of telephones by means of assessment levies against all those taking its service and maintaining a commercial line for use by the public for a fee, was held not to be a public utility subject to Commission regulation except to the extent that it afforded telephonic communication for hire to the public generally, p. 162.

Public utilities — Commission jurisdiction — Mutual telephones.

2. The Commission was held to have no jurisdiction to compel a mutual telephone company defraying the cost of serving its members by levying assessments to file a schedule of its rates and rules governing its relations with its own patrons, notwithstanding the fact that the company was a utility in so far as it afforded communication to the public generally for hire, p. 162.

[September 13, 1929.]

PROCEEDING *by the state on relation of the mutual telephone company, to review the action of the Commission in requiring the company to file certain schedules; Commission decision reversed and cause remanded with direction.*

APPEARANCES: D. W. Peters, of Jefferson City, for appellant; D. D. McDonald and H. O. Harrawood, both of Jefferson City, for respondents.

RAGLAND, J.: This is an appeal from the judgment of the circuit court of Cole county, affirming an order of the Public Service Commission, which required the Lohman & Farmers' Mutual Telephone Company (hereinafter called the company) to file with the Commission "a schedule of rates and charges and its rules and regulations governing its relations with its patrons," and to restore to certain of its subscribers a service which it had theretofore discontinued. The principal question for determination is whether the company is subject to the jurisdiction of the Public Service Commission; that is, whether it is a public utility.

The company was organized in 1907, but it has never been incorporated; its principal function is to operate a central exchange at Lohman for 17 rural telephone lines and the several lines of 40 or 41 'phone owners in the town of Lohman. Each of the rural lines is a party line, serving not to exceed 12 or 13 'phones, and is owned, managed, and kept in repair by the individual owners of the 'phones so served. The owners of each party line have an organization of their own, independent of the company, and as such select one of their number to represent them in their relations to and transactions with the company. The party lines extend to the corporate limits of Lohman; the company constructed and owns the lines which connect them with its switchboard. The 40 or 41 'phones in Lohman are owned by the individual users, but are brought into the exchange by the company.

The company owns a dwelling house in Lohman; its exchange is conducted in one room, and the remainder of the house is occupied by the operator of the exchange for residential purposes. In connection with the residence, the operator is furnished a 'phone. This seems to be the only 'phone owned by the company in the entire system.

The actual cost of operating and maintaining the exchange is levied against the 'phones served. There are 195 or 196 altogether, and the average monthly assessment against each is 25 cents. There is no other charge of any kind for the service. The owners of these 'phones constitute the company, and its property was acquired with a fund made up of membership fees and special assessments paid in by them.

At Centertown there is a mutual telephone exchange of precisely the same type as that operated by the company at Lohman. The owners of the former and the company have constructed and jointly own a so-called commercial line between Centertown and Lohman. This line enables the 'phone owners in each system to have exchange service with those of the other, but no charge whatever is made for such service.

The Southwestern Bell Telephone Company runs a long-distance toll line into the switchboard of the Centertown Company. Through an arrangement with that company the owners of 'phones on lines running into the Lohman exchange are given long-distance service over the Bell lines through the Centertown exchange. For this service they pay the tolls exacted by the Bell Company from Centertown to the points communicated with on the Bell lines; nothing is charged for the service rendered in connection with these long-distance calls over the line from Lohman to Centertown. The company, however, collects the tolls for long-distance calls originating on its lines and pays them monthly to the Centertown Company, and is allowed by the latter company for this collection service a commission of 10 per cent of the amounts so collected.

The company and the Capital City Telephone Company own and operate jointly a commercial line between Lohman and Jefferson City. A fee of 10 cents is charged for every call over this line, whether from Lohman to Jefferson City, or from Jeffer-

son City to Lohman. Upon the payment of such fee, 'phone users on the Lohman exchange can talk to Jefferson City; and the public generally are invited, or at least permitted, to use the 'phone in the company's exchange at Lohman for the purpose of making such calls. By arrangement between them one half of the tolls accruing from the use of this line goes to the company and the other half to the Capital City Company.

By special arrangement the station of the Missouri Pacific Railway Company at Lohman is given telephonic connection with the company's exchange, for which the railway company pays a flat rate of $1 per month. The company constructed the line, but it is not clear from the record whether it, or the railway company, owns the 'phone; whether by the one or the other we do not regard as material.

The only revenue that the company receives in addition to the assessments which it levies on its members is derived from its share of the tolls accruing from the use of the commercial line between Lohman and Jefferson City, its commissions for collecting long-distance tolls for the Bell Company, and the $1 per month paid by the railway company.

This proceeding originated through the filing of a complaint with the Public Service Commission by the owners of one of the party lines. Because of an alleged violation by them of a by-law, the company disconnected their line from its switchboard and refused them further exchange service. Restoration of this service was embodied in the order of the Commission under review.

[1] The company was organized as a mutual telephone company; whether it is a public utility is to be determined from what it does; and what it does, with one exception, is to operate a telephone exchange *for itself*. The one exception is: It affords "telephonic communication for hire" over its line from Lohman to Jefferson City. That one line is the only one of its properties that it has invited the public to use; it is the only one dedicated to public use. To the extent of its operation of that line it is a public utility, and no further. Terminal Taxicab Co. v. Kutz (1916) 241 U. S. 252, 60 L. ed. 984, P.U.R.1916D, 972, 36 Sup. Ct. Rep. 583, Ann. Cas. 1916D, 765.

[2] Respondents say that the company is either a public utility, or it is not a public utility, meaning thereby that, if it is a public utility with respect to any of its business, it is a public utility as to all of it. The contention seems to be based on language used in State ex rel. Danciger & Co. v. Public Service Commission (1918) 275 Mo. 483, 495, P.U.R. 1919A, 353, 361, 205 S. W. 36, 18 A.L.R. 754. That language, when applied to the facts of this case, means: The company as an owner and operator of the telephone line from Lohman to Jefferson City, and to that extent only, "is a public utility . . . within the whole purview and for all inquisitorial and regulatory purposes of the Public Service Commission Act." And we so hold.

The arrangement with the Missouri Pacific Railroad Company must be regarded as merely a private contract entered into by the company largely for the benefit of its own

members; it was not pursuant to any profession of public service on its part, expressly or impliedly made. From what has been said, it is apparent that the Public Service Commission is without jurisdiction of the company, in so far as its relations with its members are concerned; its order is too broad in other respects.

The judgment appealed from is, therefore, reversed, and the cause remanded to the circuit court of Cole county, with directions to that court to enter a judgment annulling the order.

All concur.

MISSOURI PUBLIC SERVICE COMMISSION

Re Atlantic-Pacific Stages, Incorporated

[Case No. 6455.]

Interstate commerce — Power of the state to deny motor carrier application.

1. The state is justified in denying the application of a motor carrier to operate in interstate commerce where there is evidence that it has been engaged in intrastate commerce as well as interstate service and proposes to continue to do so in violation of the laws of the state, p. 169.

Interstate commerce — Motor carriers — Subterfuge by a motor carrier.

2. The Commission regarded the practice of a motor carrier purporting to be engaged in interstate commerce of transporting passengers from points within the state to points outside of the state and returning them without charge to points within the state as an indefensible subterfuge to evade the regulation of intrastate commerce, p. 169.

Certificates — Reasons for refusing — Illegal operation.

3. The Commission refused to grant an application of a motor carrier for authority to engage in interstate commerce notwithstanding its promise to abide by the rules and regulations of the Commission, in view of its prolonged and continued disregard of the laws of the state in its previous conduct by subterfuge practices to evade the regulation of intrastate commerce, p. 169.

[October 4, 1929.]

APPLICATION *of a motor carrier for a certificate of convenience and necessity to engage in interstate commerce; denied.*

Statement.

ING, Commissioner: The Atlantic-Pacific Stages, Incorporated, seeks authority to operate as an interstate motor carrier between St. Louis, Missouri, and East St. Louis, Illinois, as part of an operation between St. Louis, Missouri, East St. Louis, Illi-

nois, Chicago, Illinois, and points east; between East St. Louis, Illinois, St. Louis, Missouri, and the Missouri-Arkansas state line south of Holland, Missouri, as part of an operation between East St. Louis, Illinois, St. Louis, Missouri, Memphis, Tennessee, and points south; between East St. Louis, Illinois, and Kansas City, Missouri, as part of an operation between East St. Louis, Illinois, St. Louis, Missouri, Kansas City, Missouri, Kansas City, Kansas, and points west; and between Kansas City, Missouri and Missouri-Kansas state line west of St. Joseph, Missouri, as part of an operation between Kansas City, Missouri, St. Joseph, Missouri, Lincoln, Nebraska, Denver, Colorado, and points west.

The application states, among other things, that the applicant is a corporation organized under and by virtue of the laws of the state of Delaware and authorized to do business in the state of Missouri; that its business is that of a motor carrier, and it now seeks authority to operate as an interstate motor carrier of passengers and their baggage in the state of Missouri. The application sets out and describes its proposed schedules of fare and time of operation, and shows the mileage of the various towns and cities through which it now operates. Applicant alleges that it has insured all of its equipment with the United States Fidelity and Guaranty Company for amounts not less than the amounts provided in this Commission's General Order No. 25, and that a copy of the policy is presented for filing. The application alleges "that the following facts are circumstances existing which are relied upon by applicant as justification of the granting of a certificate of convenience and necessity.

(A) That the officers of the applicant are qualified by experience to operate the proposed service.

(B) That the applicant is financially able to conduct the proposed service.

(C) That applicant will attempt to conform in all matters to the rules and regulations of your Honorable Commission."

This case was heard by the Commission at its hearing room at Jefferson City, Missouri, on July 24, 1929, at which time the applicant was represented by Mr. John S. Leahy, St. Louis, Missouri; the Missouri Pacific Railroad Company and the Missouri Pacific Transportation Company, protestants, were represented by Mr. T. J. Cole, St. Louis, Missouri; the Pickwick-Greyhound Lines, a protestant, was represented by Mr. Ivan Bowen, of Minneapolis, Minnesota; Mr. S. B. McPheeters and Mr. Albert V. Morris, of St. Louis, Missouri; and the Nisun Bus and Air Lines, Incorporated, a protestant, was represented by Mr. C. C. Madison, Kansas City, Missouri.

Facts.

The Atlantic-Pacific Stages, Incorporated, has been operating as a motor carrier in the state of Missouri over Highway U. S. 61 between St. Louis and the Missouri-Arkansas state line south of Holland, Missouri, and over Highway No. 40 between St. Louis and Kansas City, Missouri, since December, 1928, its western operation extending to Denver, Colorado, and its southern operation to Memphis, Tennessee. Mr. Oliver W.

Townsend, president of the Atlantic-Pacific Stages, Incorporated, stated that the applicant has instructed all agents that it is strictly an interstate operator, and that all tickets sold must be to interstate destinations. He further stated that the applicant offered to file with this Commission an insurance policy covering the equipment used in this state, and that it tendered the legal fees due the state of Missouri to the state treasurer, but that said fees were returned. Considerable testimony was offered in this case by both the applicant and protestants relative to the manner of the applicant's operations in the state of Missouri, the testimony as a whole showing that the applicant's busses traveling over the roads of this state are carrying passengers who are supplied with tickets usually indicating an interstate operation. Witnesses for the applicant stated that the applicant takes on passengers at Kansas City, Missouri, who desire to go to St. Louis, Missouri, transports them to East St. Louis, Illinois, for a passenger fare of $4, and brings them back to St. Louis, Missouri, free of charge. The president of the company, Mr. Townsend, stated that in the month of June, 1929, the applicant transported 686 passengers from St. Louis to Kansas City, Missouri. The testimony of the witness on that matter being as follows:

"*Q.* I am not talking about what you sold, I am talking about what you did. This exhibit shows that during the period of June, you took on 686 passengers at St. Louis and discharged them at Kansas City, Missouri?

A. Yes, sir.

Q. So those passengers then, were traveling between points within the State of Missouri?

A. Yes, they were. They could be interstate passengers, however, they could be sold in Chicago and come into St. Louis and be carried on through to Kansas City."

Mr. Townsend further stated that in the applicant's operation from St. Louis to Memphis, Tennessee, they take on passengers in St. Louis, Missouri, and if they have interstate tickets, discharge them at points in the state of Missouri, and that they transport passengers from points within the state of Missouri, south of St. Louis to St. Louis in the same manner; that is, they are transported from points within the state to other points within the state on applicant's line if the passenger has an interstate ticket.

Questions to Mr. Townsend and answers given by him in regard to the manner of transporting passengers clearly express the attitude of the company.

"*Q.* When it gets to East St. Louis, what is done to separate the passengers?

A. Well, the busses stop there, and the passengers can get off or they can stay on and come back to St. Louis.

Q. In other words, your bus comes back to St. Louis, and if a passenger chooses to remain on the bus and come back into St. Louis, he can do so?

A. Yes, sir.

Q. And no effort is made to compel him to get off at the point his ticket calls for?

A. No, sir."

The testimony shows that St. Louis, Missouri, is the headquarters

of the applicant; that it maintains a garage there, and that it also has a garage in Kansas City, Missouri, and has numerous places where tickets may be purchased in both St. Louis and Kansas City, Missouri. The applicant maintains a depot in a drug store at Kansas City, Kansas, and has a ticket agent there. At East St. Louis, Illinois, the applicant maintains a waiting room and rest room at 500 Missouri avenue. Tickets may be purchased there and at one other place in East St. Louis.

Mr. Townsend further explained the character of the applicant's operations as shown by the following questions and answers:

"*Mr. Madison:* As I understand it then, if a passenger applies to you at St. Louis, Missouri, for transportation to Kansas City, Missouri, you sell him a ticket via East St. Louis, Illinois, which enables him to board the bus in St. Louis, Missouri, and disembark in Kansas City, Missouri.

A. He goes from St. Louis to East St. Louis.

Q. In other words, the only manner in which the interstate feature enters into it, you haul him into Illinois and back.

A. To Kansas City, Missouri.

Q. How do you handle the baggage of passengers on your Missouri division, do you check the baggage?

A. The baggage is checked.

Q. Suppose a passenger buys a ticket in Kansas City, Missouri, and has baggage, and buys a ticket to East St. Louis, Illinois, and checks his baggage, and you issue him a check, can he go on your bus, make the trip from Kansas City, Missouri to East St. Louis and then back to St. Louis and have his baggage delivered to him at St. Louis, Missouri?

A. Yes, sir."

Mr. Townsend stated that if a prospective customer goes to the applicant's depot at Kansas City, Missouri, and says that he wants to go to St. Louis, Missouri, he is instructed that he will have to buy a ticket to East St. Louis, Illinois. If he will purchase such ticket, it is sold to him, notwithstanding the fact that he said he wants to go to St. Louis, Missouri; that he is then taken to East St. Louis, Illinois, and brought back to St. Louis, Missouri, without further charge. The evidence further shows that in taking the passenger back to St. Louis over the Eads bridge applicant paid the toll charge. The time consumed in going from St. Louis, Missouri, to East St. Louis, Illinois, and return is about one hour, and about the same length of time is consumed in going from Kansas City, Missouri, to Kansas City, Kansas, and return. Mr. Townsend stated that the applicant is conducting what they believe to be an interstate operation; that they have no rules and regulations about how their operations should be conducted, but are willing to abide by any rules and regulations this Commission will lay down if the applicant is granted an interstate certificate. An explanation of the reason why the applicant is continuing to operate as hereinbefore explained is given by Mr. Townsend, and may be well explained by the following quotation from the transcript of the record.

"*Q.* You had determined to abandon this run to East St. Louis when

this matter was continued the last time, I believe, and we had filed an amendment here to that route, you knew about that?

A. Yes, sir.

Q. By reason of numerous arrests that were being made of your men, you found it necessary to apply to the United States Court for an injunction, at least a temporary restraining order, and because that matter is pending is the only reason you haven't actually changed the proposed route in accordance with the matter filed here when I first came into the matter?

A. Yes, sir."

Mr. Townsend further stated that a passenger in St. Louis may buy a ticket to Cape Girardeau, Missouri, board the bus at St. Louis, ride to East St. Louis, Illinois, then back to St. Louis and on to Cape Girardeau. This is also regarded by the applicant as an interstate operation.

Mr. L. G. Markel, vice-president and traffic manager of the Atlantic-Pacific Stages, Incorporated, stated that it has been the desire and intention of the officers of the applicant to comply with the rules and regulations of the Public Service Commission and with the laws of this state, in so far as such rules and regulations affect interstate transportation, and in the event the applicant is granted a certificate, in so far as they affect any transportation. The exact language of the witness and the questions propounded to him are as follows:

"*Q.* Has it been the desire, intention, and wish on part of you and other officials of this company to, in all wise, comply with the rules and regulations of the state of Missouri?

A. It has.

Q. Holding yourself particularly amenable to the rules and regulations of this Commission?

A. In so far as they affect interstate transportation, yes, and in the event we are granted the certificate in so far as they affect any transportation."

With referance to the applicant's method of operation, Mr. Markel further stated:

"*A.* . . . . . At the time this application now being heard was filed our Kansas City agent was advised that he could sell to St. Louis, Missouri, via East St. Louis, Illinois. It was upon receipt of advice of counsel, we were informed that was an interstate operation, and we have so conducted our operation since that time. On this exhibit it will show 567 passengers originating at Kansas City, Missouri, destined to East St. Louis. I would say 95 per cent of that number was transported to East St. Louis and back to St. Louis, Missouri.

The testimony shows that the fare from East St. Louis, Illinois, to Kansas City, Missouri, is identical with the fare from St. Louis, Missouri, to Kansas City, Missouri, and the same is true of the fare from Kansas City, Kansas, to St. Louis, Missouri, as compared with the fare from Kansas City, Missouri.

The position of the company with reference to its operations may be further illuminated by the witness, Markel, in the following questions and answers:

"*Mr. Painter:* Mr. Markel, do you agree with the witness preceding you,

that when a prospective passenger applies at Kansas City, Missouri, and states that he wants to go to St. Louis, Missouri, that you have a right to sell him a ticket to East St. Louis, Illinois, and take him over to East St. Louis and bring him back to St. Louis?

A. Yes, sir, that is our belief, and it is based on advice of counsel."

Mr. C. E. Buehner, assistant manager of the Better Business Bureau, Kansas City, Missouri, stated that on June 19, 1929, he went to theAtlantic-Pacific bus station at 1506 Main street, Kansas City, Missouri, where he found a sign reading, "St. Louis, $4, round trip, $7.40." The top of the sign reads "Atlantic-Pacific Stages, Incorporated," and below were listed a number of stations. Mr. Buehner further stated that he asked the ticket seller for a ticket to St. Louis and was informed that the fare was $4; that he paid the ticket seller $4 and the ticket seller delivered to him a ticket stamped with a rubber stamp "Kansas City to St. Louis, June 19, $4." A photostatic copy of this ticket was filed in evidence. After receiving this ticket, Mr. Buehner further stated that he boarded a bus of the applicant at 1506 Main street, Kansas City, Missouri, from which place he was taken to the Mercer hotel at the southeast corner of Twelfth and McGee streets, Kansas City, Missouri, where he was told it was necessary to get another bus for St. Louis; that he then got into another Atlantic-Pacific bus and proceeded on Highway No. 40 as far as Boonville, where he alighted. He did not go any farther on that ticket.

Mr. Arthur D. Bowen, an employee of the Motor Transit Management Company of Chicago, Illinois, stated that he is an inspector connected with the Greyhound Lines, Incorporated; that on June 20, 1929, he purchased a ticket at the office of the applicant company at Farmington, Missouri, for which he paid $1.75. With him at the time was another representative of the Motor Transit Management Company, who also purchased a ticket and paid $1.75 for it. The witness stated that they boarded a bus of the applicant company at Farmington and when they arrived at 105 North Sixth street, St. Louis, the driver of the bus said, "This is all of it, folks, this is as far as we go, all off here."

The same witness stated that on February 16, 1929, he called at the office of the applicant in St. Louis for a ticket to Sikeston, Missouri, and was informed that he could not secure a ticket to Sikeston, but that they would sell one to Blythesville, Arkansas, and that they could get off at Sikeston. The next morning, the witness and his partner boarded a bus at 105 North Sixth street, St. Louis, which is the site of the applicant's bus depot. He stated that the baggage check received by them read, St. Louis, Missouri, to Blythesville, Arkansas, and that they both alighted at Sikeston, Missouri, where their baggage was delivered to them. The witness further stated that he and his friend returned to St. Louis on a bus of the applicant, which they boarded at Sikeston, each one having tickets purchased at Sikeston which read from Sikeston, Missouri, to East St. Louis, Illinois; that one other passenger boarded the applicant's bus at Sikeston, and another at Far-

mington, both of which were discharged at St. Louis, Missouri.

Numerous other instances could be referred to that were testified to by witnesses, but we deem it unnecessary. The testimony quoted is sufficient to show the attitude of the applicant and the character of service now rendered and proposed to be rendered by it.

Conclusions.

[1–3] The problem confronting the Commission in this case is whether a state is justified in denying and has the power to deny the application of a motor carrier to operate interstate over its highways, when the testimony shows that the motor carrier is engaged in intrastate as well as interstate motor service, and proposed to continue to so operate in violation of the laws of the state. We do not believe that the state is compelled to authorize such motor carrier service merely because the applicant says it seeks interstate authority only. That a state has the power to regulate motor carriers operating over its highways has been settled by numerous decisions of the courts, including the Supreme Court of the United States. These decisions hold that a state has the power to require all motor carriers, interstate as well as intrastate, to pay a reasonable fee or tax for the up-keep of the highways so long as such fee or tax is not a burden upon interstate commerce, and that the motor carrier, both interstate and intrastate, is subject to the police power of the state.

In this case the evidence is overwhelming that the applicant is engaged in intrastate commerce. By a peculiar manner of reasoning, however, the applicant contends that it believes it is engaged strictly in interstate commerce when it transports a passenger from a point within the state to a point without the state and then brings the passenger back to the point of destination within the state, free of charge.

The Commission regards such method of operation as an indefensible subterfuge. It is true the officers of the applicant state that if it is authorized to operate interstate, as requested, it will abide by all the rules and regulations of this Commission. The fact that it has been engaged in this illegal method of carrying passengers for so long and is still so engaged, is not, to say the least, reassuring. The Commission does not feel inclined to grant the applicant's request on its promise, in view of its prolonged and continued disregard of the laws of the state and the rules and regulations of this Commission. The applicant should "come into court with clean hands" and show by its conduct that it respects and complies with the law and regulations of the state. Its actions speak louder than its words.

This Commission believes that legitimate commerce between the states should not be interfered with by the states, but we do not believe that a state should be compelled to license and authorize the operation of a motor carrier on the plea that its operations will be interstate, when all of the facts are to the effect that its proposed operations are largely intrastate. The testimony of the applicant's officers shows that from 90 per cent to 95 per cent of the passen-

gers transported by it on State Highway No. 40 on tickets from Kansas City to East St. Louis, Illinois, and from St. Louis, Missouri, to Kansas City, Kansas, are really transported to and from the two Missouri cities. According to the census of 1920, St. Louis, Missouri, is a city with a population of approximately 775,000; East St. Louis, Illinois, just across the Mississippi river from St. Louis, is a city of approximately 67,000 population; Kansas City, Missouri, is a city of approximately 325,000 population, and Kansas City, Kansas, immediately across the Missouri-Kansas state line, is a city of about 105,000 population. The testimony shows that there are but few passengers who desire to go from Kanas City, Kansas, to points east, as compared with those who go from Kansas City, Missouri, and that there are likewise but few passengers from East St. Louis, Illinois, to points west, as compared with those from St. Louis, Missouri.

It is plain that the applicant is not deeply interested in transporting persons from Kansas City, Kansas, to St. Louis, Missouri, nor from East St. Louis, Illinois, to Kansas City, Missouri, but that the business sought by the applicant and that which it really has, east and west across this state, is the transportation of passengers between St. Louis and Kansas City, Missouri.

The power of this Commission to deny the request of the applicant is questioned. The applicant has submitted itself to the jurisdiction of this Commission and, we believe, rightly so. Section 4 of the original Missouri Bus Law provides that it is unlawful for any motor carrier to operate or furnish service within this state without first having obtained from the Commission a certificate of public convenience and necessity. Section 6b of the Missouri Motor Bus Law as amended by the Act of the legislature of 1929, provides that

"Every person, firm or corporation who shall desire to engage in or be engaged in the interstate transportation of passengers or freight, shall annually and before using any of the highways of this state now or hereafter constructed, improved, or maintained by the state highway department, apply to and receive from the Public Service Commission of Missouri a permit so to do, and shall pay to the treasurer of the state of Missouri for the use of the state road fund for the maintenance, repair, and reconstruction of the public highways of this state the same license fees as are now or may hereafter be required by law to be paid by resident motor carriers engaged in the transportation of passengers or freight within this state, and shall comply with all regulations as to size, weight, speed, and carrying capacity of the motor vehicles used as are now or may hereafter be fixed by the Public Service Commission of Missouri or by the laws of this state."

The validity of the provision requiring an interstate bus operator to secure a certificate of public convenience and necessity before using any state highways was upheld by the Supreme Court of the United States as early as 1927 in Clark v. Poor (1927) 274 U. S. 554, 71 L. ed. 1199, P.U.R.1927D, 346, 47 Sup. Ct. Rep. 702.

Applicant has been conducting what it claims to be an interstate operation over U. S. Highway No. 61, between St. Louis and a point on the Missouri-Arkansas state line south of Holland, Missouri, and between Kansas City, Missouri, and the Missouri-Kansas state line west of St. Joseph, Missouri. These operations were continued for a considerable length of time before applying to the Commission for a certificate or permit for the operation.

The Commission assumes that it has the power to issue a permit to an interstate motor carrier who complies with the laws of this state, and we are also of the opinion that we have the power to deny a permit to an interstate or intrastate motor carrier if sufficient and just reasons exist for such denial. In the case of Detroit-Cincinnati Coach Line v. Public Utilities Commission (1928) 119 Ohio St. 324, P.U.R.1929B, 335, 340, 164 N. E. 356, 358, which was decided by the supreme court of the state of Ohio, the right of the Ohio Public Service Commission to revoke the certificate of a motor carrier operating in intrastate commerce because of flagrant violations of such certificate including unauthorized intrastate operations is sustained. The court in that case said:

"The Commission has found that the operator has flagrantly violated the laws of the state and the regulatory rules of the Commission. The right of Congress to regulate commerce between the states, and the right of state governmental agencies to safeguard that right, must necessarily be subject to the further condition that the operator while carrying on an interstate operation within this state will respect and obey the valid laws of the state regulating intrastate operators of similar character. All these matters are clear and undoubted. The only problem presented by this proceeding is whether the state authorities can enforce that obedience by the extreme process of revocation of the interstate right altogether. The persons operating motor vehicles upon state highways as common carriers in interstate commerce are guaranteed against unreasonable interference and unreasonable burdens, but this immunity does not justify such persons in becoming outlaws or abusing franchises thus given to them. We are of the opinion that the right of revocation and prohibition is necessary to the maintenance of a proper respect for state laws and state institutions. We are further of the opinion that such revocation upon such grounds does not offend against the provisions of § 8 of article 1 of the Federal Constitution, though it, of course, should not be resorted to except in aggravated cases."

In the case of Inter-City Coach Co. v. Atwood (1927) 21 F. (2d) 83, 84, 85, which was a suit in equity to restrain certain public officials of the state of Rhode Island from interfering with the operation of the plaintiff's bus line, the court said:

"At the hearing, the attorney general of Rhode Island, who appeared for the defendants, stated that the only matter of fact really in controversy was whether the plaintiff's projected operations constituted interstate commerce within the meaning of the law. This statement was accepted by the plaintiff and by the

court; and the case proceeded as on final hearing upon the understanding that the attorney general would file nunc pro tunc an answer raising that question only."

In this case the applicant bus company applied to the Rhode Island authorities for, and was refused, a permit to operate busses between Providence, Rhode Island, and Attleboro, Massachusetts. The roads over which plaintiff proposed to operate its busses crossed the Rhode Island-Massachusetts state line and proceeded for a short distance through the state of Massachusetts, and the Rhode Island Commission took the position that the applicant had no bona fide intention of engaging in intrastate transportation of passengers between Attleboro, Massachusetts, and Rhode Island points, but was in reality trying to run a bus line between Providence and Woonsocket, both in Rhode Island, and was diverting its route for a few miles through a thinly settled portion of Massachusetts in order to ground a claim of needing no permit from the Rhode Island authorities because engaged in interstate commerce. The court said:

"In our opinion, interstate commerce, in order to be entitled to the protection of the Federal Constitution must be real and bona fide. The question whether it is so is open to inquiry.

"Freedom of commercial intercourse between the states, as the Supreme Court has repeatedly held, is of such paramount importance that interference with it by the states cannot be permitted; and the powers of the states have been restricted accordingly. Western U. Teleg. Co. v. Kansas ex rel. Coleman (1910) 216 U. S. 1, 54 L. ed. 355, 30 Sup. Ct. Rep. 190. But the commerce thus protected is real commerce. It has never been held, and we believe never intended, that a mere fiction of interstate commerce may be so availed of as to deprive a state of its power to enforce sound regulation of the use of its highways in intrastate commerce. Interstate Busses Corp. v. Holyoke Street R. Co. (1927) 273 U. S. 45, 51, 71 L. ed. 530, P.U.R.1927B, 46, 47 Sup. Ct. Rep. 298."

This Commission does not believe that a motor carrier who will persistently indulge in such flagrant violation of the state laws and rules of its state regulating body as shown in this case, should be authorized under the laws of this state to operate as a motor carrier either interstate or intrastate.

An order in accordance with the views herein expressed will be issued.

Stahl, Chairman, Hutchison, Porter, and Hull, Commissioners, concur.

MAINE SUPREME JUDICIAL COURT

Kennebunk, Kennebunkport & Wells Water District

v.

Inhabitants of Town of Wells

[— Me. —, 147 Atl. 188.]

Statutes — Construction — Creation of water district.

1. A statute creating a water district must be construed in the light of the general policy of the state as expressed in its public utility laws, p. 175.

Municipal plants — Jurisdiction of Commission — Water utility.

2. Every quasi municipal corporation serving the public as a water company is a public utility and as such is subject to the control of the Commission, p. 175.

Discrimination — Water rates — Statutes.

3. A statute requiring rates established by a water district to be uniform simply was held to require that such rates be just and equal, giving due regard, however, to the consumption or character of use by the purchaser, p. 175.

Appeal and review — Presumption favoring Commission — Water rates.

4. It will be assumed on appeal that rates fixed by the Commission within the scope of its authority are uniform as between users of the same class, and such findings, classifying service, will not be disturbed upon appeal unless clearly wrong or resulting in confiscation or taking of property without due process, p. 175.

Rates — Municipal plant — Water schedule.

5. Rates of a water utility which has been taken over by a water district, if adopted by the trustees of the latter, become rates of the water district and must be filed with the Commission, p. 176.

Rates — Necessity for filing schedules — Law suits.

6. The courts will not enforce the recovery of utility rates in a suit at law until the schedule of such rates has been filed with the Commission, p. 176.

[July 18, 1929.]

REPORT *from proceedings in the supreme judicial court of York County on an action by a water district against inhabitants of a certain town; report discharged.*

Argued before Wilson, C. J., and Dunn, Sturgis, Barnes, Pattangall, and Farrington JJ.

APPEARANCES: Harold H. Bourne, of Kennebunk, for plaintiff; Ray P. Hanscom, of Wells, for defendant.

WILSON, C. J.: An action by the Kennebunk, Kennebunkport & Wells Water District to recover sums alleged to be due the district as hydrant rentals from the town of Wells. It comes to this court on report.

Prior to 1922, the inhabitants of the towns of Kennebunk, Kennebunkport, and Wells, and a part of the town of York, and the city of Biddeford, were supplied with water for domestic and municipal purposes by the York County Water Company. On application to the legislature of 1921 by citizens of these towns, an act was passed (chapter 159, Private & Special Laws 1921), creating a water district composed of the towns of Kennebunk, Kennebunkport, and a part of the town of Wells, to become effective when accepted as provided in the act. The act contained the usual provisions for taking over the property and franchises of the water company.

The act having been duly accepted, but the trustees of the district and the water company being unable to agree as to the price to be paid, a petition was filed in the court by the trustees of the district with a view to acquiring the property by condemnation. Before these proceedings reached a hearing, however, the parties agreed to terms of purchase. The agreement was reached about April 1, 1922; the district on May 8, 1922, taking over the property, including by the terms of the act the net proceeds of all receipts after January 1, 1922.

Prior to the formation of the district, the water company, with the approval of the Public Utilities Commission, had fixed rates to the consumers, including hydrant rentals for the three towns, and according to the established rates the town of Wells was required to pay annually a sum averaging approximately $68 per hydrant, and the town of Kennebunk approximately $38 per hydrant per year. It does not appear in the report what the exact annual rental per hydrant for the town of Kennebunkport was, but the inference from the record is that it was considerably more than that paid by the town of Kennebunk, and that the average for the three towns was between $45 and $50 per hydrant per year.

During the period from January 1 to May 8, 1922, on which latter date the district actually took over the property, the water company, of course, collected or billed to the several towns the hydrant rentals at the old rates, and following the taking over of the property the trustees of the water district continued to bill the hydrant rentals at the rates fixed by the water company until April 1, 1923, when a flat rate of $35 per hydrant per year was fixed by the trustees for each town.

The total rental for hydrants in the town of Wells at the old rate of the water company to April 1, 1923, and at the new rates fixed by the trustees of the water district from April 1 until December 31, 1923, totals $6,595.37, and the total amounts paid by the town of Wells up to January 1, 1924, was $4,717.53, leaving

a balance due, as the water district claims, of $1,877.84.

The town of Wells, however, contends that the old rates for hydrants became illegal from January 1, 1922, the date when the district was entitled to receive the rates, and according to the rates finally fixed by the water district a much less amount is due. It bases this claim on a provision in the act creating the district which provides that: "All individuals, firms, and corporations, whether public, private, or municipal, shall pay to the treasurer of said district the rates established by said board of trustees for the water used by them, and said rates shall be uniform within the district." Section 11.

[1] This contention, we think, cannot be sustained. The act creating the district must be construed in the light of the general policy of the state, as expressed in chapter 55, Rev. St. Every such district is quasi municipal in its nature, and this district is so termed in the act creating it.

[2] Every quasi municipal corporation serving the public as a "water company" is a "public utility," and as such is subject to the control of the Public Utilities Commission. There is nothing in the act creating this district to indicate that the legislature intended to exempt it from the control of the Utilities Commission.

By the act of 1913 (see chapter 55, Rev. St.) the legislature vested in the Public Utilitites Commission exclusive control over the rates of all public utilities, and provided the method by which all unjust and unreasonable or discriminatory rates should be remedied, subject only to appeal to this court on questions of law by bill of exceptions.

[3] When the legislature declared that the rates established by the trustees of the district shall be uniform throughout, it required no more than is required under §§ 16 and 33 of chapter 55, Rev. St., viz. that all rates shall be reasonable and just and without unjust discrimination. This provision in the act creating the district should not be construed to require every householder in the district to pay the same rate, regardless of the amount of water used, or that no one could use meters, unless all did, or that rates for all kinds of service, domestic or municipal, regardless of the amount of water used or the expense of supplying it, must be the same. Absolute uniformity in public service rates, like uniformity in taxation, is the unattainable. It can only be approximated.

Uniformity, as required by the act creating the district, therefore, must be held to mean that the rates established by the trustees must be reasonable and just, and without unjust discrimination between takers of the same class, having reference to the nature of the service and also the cost of supplying it. 40 Cyc. 802; 27 R. C. L. 1448–1451; Souther v. Gloucester (1905) 187 Mass. 552, 73 N. E. 558, 69 L.R.A. 309.

[4] Whenever the regulatory body created by the state, acting within the scope of its authority, has approved certain rates as reasonable and just, and not unjustly discriminatory, and no grievance is claimed in due course by those affected, the courts will assume that the rates are uniform as between users of the same class. The

establishing of classes of users is a matter of judgment, and is vested finally in the Utilities Commission, § 31, chap. 55, Rev. St., and a finding by the Commission on such questions will not be disturbed by this court, unless clearly without any basis on which to rest, or results in confiscation, or the taking of property without due process.

When the district in this instance took over the property of the water company, it found in force rates, including those for hydrant rentals, which had been approved after hearing by the Utilities Commission. We think it had a right to assume they were not unjustly discriminatory, as between the takers of this municipal service. The adjustment of a schedule of rates is not a matter to be done offhand. Many elements enter into reasonable rates and the classification of users.

The dividing of the total hydrant rentals in the three towns by the total number of hydrants, as suggested by counsel, would, of course, have produced the same rates for each town; but it might not have produced reasonable and just rates. Rate making is not so simple a problem.

It is clear that, until the district and the water company arrived at an agreement to take over the property, the act contemplated that the rates established by the water company should remain in force; nor could new rates be put into effect until the trustees were in possession and control. The legislature must also have contemplated that some time would elapse after taking over the property before the trustees of the district under the new conditions could fairly weigh the elements entering into changes in the schedule of rates which had been in force under the water company.

[**5, 6**] It cannot be determined, however, from the report, whether the trustees of the district, immediately after taking over the property, formally adopted the rates of the water company, and, if so, whether they filed them as the rates established by the district with the Public Utilities Commission. The rates of the water company, if adopted by the trustees, were no longer those of the water company, but became on adoption those established by the district, and according to the plain intent of chapter 55, Rev. St., must be filed with the Utilities Commission, in order that they may be of public record, and be complained against by any person aggrieved thereby. Until this is done, the courts will not enforce the recovery of them in a suit at law. A utility has no right to furnish service to the public until it has complied with the provisions of chapter 55. Failure to do so subjects it to a penalty.

None of the facts for the determination of these questions appear in the report. The report is lacking in so many respects for a determination of the rights of these parties, lest injustice be done, the report is discharged, in order that the parties, if they so desire, may take out additional evidence.

Report discharged.

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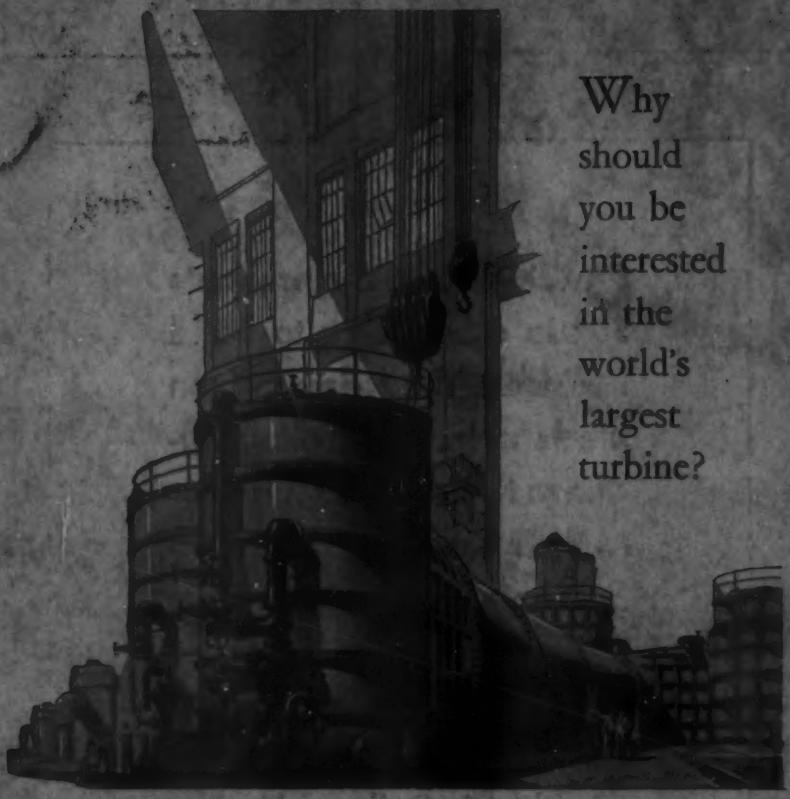

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